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Supreme Court, U.S.
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Case No. _____

IN THE SUPREME COURT

OF THE UNITED STATES

October Term 1992

RONALD L. BRANSON,

Petitioner,

vs.

CRAIG J. STRAUCH,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

Second Appellate District

PETITION FOR WRIT OF CERTIORARI

RONALD L. BRANSON
Petitioner In Pro Per
10853 White Oak Avenue
Granada Hills CA 91344
Msg.phone (818)446-8356

November 16, 1992

159 pp

QUESTIONS PRESENTED FOR REVIEW

Petitioner throughout this petition is referred to as "plaintiff."

(1) Whether the Court of Appeal deprived plaintiff of liberty and property ***without due process of law*** by denying plaintiff notice and opportunity to be heard in re Failure to State a Cause of Action.

(2) Whether the Court of Appeal deprived plaintiff of liberty and property ***without due process of law*** by denying plaintiff notice and opportunity to be heard in re Failure to Prove Damages against defendant STRAUCH.

(3) Whether the Court of Appeal deprived plaintiff of liberty and property ***without due process of law*** by denying plaintiff an opportunity to be heard on the facts alleged in the complaint leading to (1) the bogus misdemeanor complaint, and (2) the lack of subject matter jurisdiction of the municipal court in the underlying criminal proceeding.

(4) Whether the Court of Appeal deprived plaintiff of liberty and property ***without due process of law*** by acting in excess of its limited jurisdiction as a reviewing court on appeal.

TABLE OF CONTENTS

	Page
Questions Presented for Review	
Reference to Official/Unofficial Reports	1
Grounds for Jurisdiction	1
Constitutional Provisions/Statutes Involved	1
Statement of the Case	2
Argument:	
First Question (Re Cause of Action)	5
Second Question (Re Proof of Damages)	10
Third Question (Re Facts Leading to the Bogus Misdemeanor Complaint and Lack of Subject-Matter Jurisdiction of Municipal Court)	12
Fourth Question (Excess of Jurisdiction)	14
Conclusion	16
Appendix	

* * *

TABLE OF AUTHORITIES

Cases:	**Pages**
Agarwal v. Johnson (1979) 25 Cal.3d 932, 160 C.R. 141	A-92,A-93
Alcorn v. Anbro Eng. Inc. (1970) 2 Cal.3d 493, 86 C.R. 88	A-92
Amos v. Superior Ct., 182 Cal.App.2d 343, 6 C.R. 252	A-78
Bordenkircher v. Hayes (1978) 434 U.S. 357	A-103,A-106
Brown v. Illinois (1975) 422 U.S. 590	A-72
Burris v. Superior Ct. (1974) 43 Cal.App.3d 530	A-90
Cervantes v. J.C. Penney Co. (1979) 24 Cal.3d 579	7,A-83,A-92
Chaffin v. Stynchcombe, 412 U.S. 17	A-106
Charles v. United States (9th Cir.1960) 278 F.2d 386	A-84
Chimel v. California, 395 U.S. 752	A-80,A-85
Collins v. City/County of San Francisco (1975) 50 Cal.App.3d 671	8,A-70
Collins v. Owens (1947) 77 Cal.App.2d 713	8,A-70,A-71
Collyer v. S.H. Kress & Co. (1969) 270 Cal.App.2d 429	A-81
County of San Luis Obispo v. Abalone Alliance (1986) 178 Cal.App.3d 848	A-90

Cunha v. Superior Ct. (1970) 2 Cal.3d 352, 85 C.R. 160 — A-88

Daniels v. Williams (1986) 474 U.S. 327 — 10,12,14,16

Dragna v. White (1955) 45 Cal.2d 469, 289 P.2d 428 — A-74,A-89

DuLac v. Perma Trans Products, Inc. (1980) 103 Cal.App.3d 937 — 8,11,A-71

Dunaway v. New York (1979) 442 U.S. 200 — A-72,A-81

Esteybar v. Municipal Court (1971) 5 Cal.3d 119, 95 C.R. 524 — A-100

Franks v. Delaware (1978) 438 U.S. 154 — A-80

Golden v. Dungan (1971) 20 Cal.App.3d 295, 97 C.R. 577 — A-93

Harden v. San Francisco Bay etc. (1989) 215 Cal.App.3d 7 — A-71,A-72,A-75

Henry v. United States, 361 U.S. 98 — A-85

Hicks v. Bd. of Supervisors (1977) 69 Cal.App.3d 228, 138 C.R. 101 — A-98,A-100

Illinois v. Lafayette (1983) 462 U.S. 640 — A-84

In Re Geer (1980) 108 Cal.App.3d 1002, 166 C.R. 912 — A-77,A-100

Kiseskey v. Carpenters Trust etc. (1983) 144 Cal.App.3d 222 — A-93

Kosky v. James (1975) 47 Cal.App.3d 349, 120 C.R. 754 — A-77

Landrum v. Superior Ct. (1981) 30 Cal.3d 1, 177 C.R. 325 A-78,A-79

Logan v. So. Calif. RTD (1982) 136 Cal.App.3d 116, 185 C.R. 878 A-93

Malone v. Superior Ct. (1975) 47 Cal.App.3d 313, 120 C.R. 850 A-102

Necochea v. Superior Ct. (1972) 23 Cal.App.3d 1012, 100 C.R. 693 A-102

Oppenheimer v. City of Los Angeles (1951) 104 Cal.App.2d 551 8,A-71,A-75

Parks v. Superior Ct. (1952) 38 Cal.2d 609, 241 P.2d 521 A-99

People v. Adams, 43 Cal.App.3d 697 A-99

People v. Aldridge (1984) 35 Cal.3d 473, 198 C.R. 538 A-95,A-96

People v. Arnold, 66 Cal.2d 438, 58 C.R. 115 A-88

People v. Balassy, 30 Cal.App.3d 614, 106 C.R. 461 A-73

People v. Brandon (1989) 206 Cal.App.3d 1565 A-78

People v. Brice (1982) 130 Cal.App.3d 201, 181 C.R. 518 A-101

People v. Brite, 9 Cal.2d 666 A-81

People v. Brown (1955) 45 Cal.2d 640 A-85,A-86

People v. Campbell (1981) 118 Cal.App.3d 588, 173 C.R. 442 .... A-88

People v. Cohn (1973) 30 Cal.App.3d 738, 106 C.R. 579 A-83

People v. Hall (1974) 42 Cal.App.3d 817, 117 C.R. 228 A-73

People v. Hamilton (1985) 41 Cal.3d 211 A-86

People v. Hardin (1967) 256 Cal.App.2d Supp. 954, 64 C.R. 307 A-78

People v. Hatcher, 2 Cal.App.3d 71 A-87

People v. Hawkins (1978) 85 Cal.App.3d 960, 149 C.R. 855 A-77,A-78

People v. Herdan, 42 Cal.App.3d 300 116 C.R. 641 A-88

People v. Holloway (1985) 176 Cal.App.3d 150, 221 C.R. 394 A-97

People v. Jaurequi (1956) 142 Cal.App.2d 556, 298 P.2d 896 A-81

People v. Lara, 67 Cal.2d 365, 62 C.R. 586, 432 P.2d 202 A-73

People v. McFadden, 4 Cal.App.3d 672, 84 C.R. 675 A-73

People v. Municipal Court (Pellegrino) (1972) 27 Cal.App.3d 193, 103 C.R. 645 A-98,A-99,A-100,A-104

People v. Parker (1978) 85 Cal.App.3d 439 A-87,A-88

People v. Rogers (1966) 241 Cal.App.2d 384, 50 C.R. 559 A-95

People v. Simon (1955) 45 Cal.2d 645, 290 P.2d 531 A-85

People v. Superior Ct. (Chico etc. Health Center) (1986) 187 Cal.App.3d 648 A-78

People v. Superior Ct. (Keifer) (1970) 3 Cal.3d 807 A-96,A-97

People v. Superior Ct. (Simon) (1972) 7 Cal.3d 186 A-73,A-82,A-96

People v. tarantino (1955) 45 Cal.2d 590, 290 P.2d 505 A-80

People v. Tenorio (1970) 3 Cal.3d 89, 89 C.R. 249 A-101

People v. Wallace (1985) 169 Cal.App.3d 406, 215 C.R. 203 A-72,A-75,A-81,A-98, A-99,A-100,A-102, & A-103

Perry v. Robertson (1988) 201 Cal.App.3d 333 9,13

Pollock v. Superior Ct. (1969) 272 Cal.App.2d 548 A-73,A-75,A-77,A-78,A-81

Ramsden v. Western Union (1977) 71 Cal.App.3d 873, 138 C.R. A-70

Remers v. Superior Ct. (1970) 2 Cal.3d 659, 87 C.R. 202 A-97

Rosato v. Superior Ct. (1975) 51 Cal.App.3d 190, 124 C.R. 427 A-98,A-100

Select Base Materials v. Bd. of Eq. (1959) 51 Cal.2d 640, 355 P.2d 672 A-79

Shick v. Bach (1987) 197 Cal.App.3d 1321, 238 C.R. 902 A-105

Sibron v. New York (1968) 392 U.S. 40 A-97

Stanley v. Justice Ct. (1978) 55 Cal.App.3d 244, 127 C.R. 532 A-75,A-82,A-98,A-100

Steagald v. United States (1981) 451 U.S. 204 — A-80

Sullivan v. County of Los Angeles (1974) 12 Cal.3d 710, 117 C.R. 241 — A-82

Terry v. Ohio (1968) 392 U.S. 1 — A-88

Tracy v. Municipal Ct. (1978) 22 Cal.3d 760, 150 C.R. 785 — A-75

United States v. Goodwin (1982) 457 U.S. 368 — A-106

United States v. Lefkowitz (1932) 285 U.S. 452 — A-72

United States v. Rabinowitz, 339 U.S. 56 — A-85

Youngblood v. Gates (1988) 200 Cal.App.3d 1302 — A-75,A-79

Zinermon v. Burch (1990) 110 S.Ct. 975 — 10,12,13,14,16

U.S. Constitution:
- Fourth Amendment — 14,15,A-79,A-80,A-82, A-84,A-86
- Fifth Amendment — 10,12,14,16
- Fourteenth Amendment — 10,12,14,16

California Constitution:
- Art.I, Sec.7(a) — A-82,A-116
- Art.I, Sec.13 — 14,15,A-80,A-82,A-86,A-116

California Evidence Code:
- Section 664 — 7,A-83,A-86

California Government Code:
- Section 820.4 — A-82
- Sections 26500, 26501 — A-75,A-98,A-99

California Penal Code:

Section 7(9)	A-76,A-80
Section 17(b)(4)	A-97,A-98,A-101,A-102,A-103
Section 145	A-75,A-89
Section 146	A-73,A-115
Section 242	A-87
Section 807	A-80
Section 808	A-76,A-77,A-80,A-81
Section 825	14,A-74,A-75,A-76, A-77,A-79,A-81,A-89,A-90
Section 836	A-73,A-82,A-85,A-94,A-115
Section 849(a)	14,A-75,A-76,A-77,A-79, A-81,A-89,A-90

Miscellaneous:

16 AmJur 2d 271, Conspiracy §§56,68,49	A-105
61 Ops. Atty. Gen. 487	A-76,A-80
Prosser & Keeton, Torts 31	A-90
Rest.2d Torts §46	A-92,A-93
Witkin Cal.Crim.Proc. (1963), Proceedings Before Trial §117	A-74,A-89
2 Witkin Summ. Torts §84	A-74,A-89
5 Witkin Summ. 9th Ed. (1988) Torts §6	A-90

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REFERENCE TO OFFICIAL/UNOFFICIAL REPORTS OF OPINIONS

United States Reports
Supreme Court Reporter
Federal Reporter, 2d Series
California Supreme Court Reports, 2d & 3d
California Appellate Reports, 2d & 3d
California Reporter
Pacific Reporter, 2d Series

GROUNDS FOR JURISDICTION

(1) The final opinion sought to be reviewed was filed June 3, 1992; rehearing was denied June 30, 1992; review by the State Supreme Court was denied August 19, 1992.

(2) The statutory provision believed to confer on this Court jurisdiction to review the final state opinion in question by writ of certiorari is Title 28 U.S.C. §1257(a). [Text in Appendix].

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitutional Provisions:
Fourth Amendment, U.S. Constitution
Fifth Amendment, U.S. Constitution
Fourteenth Amendment, U.S. Constitution
Art.I, Sec.7(a), California Constitution
Art.I, Sec.13, California Constitution

Statutes Involved:
Title 28 U.S.C. §1257(a)-
California Evidence Code, §664
California Government Code, §§820.4, 26500, 26501
California Penal Code, §§7(9), 17(b)(4), 145, 146, 242, 807, 808, 825, 836, 849(a)

[Pertinent texts are set forth in the Appendix]

STATEMENT OF THE CASE

The following facts are material to the questions presented. The issues presented in the underlying State appeal involving the default of defendant STRAUCH have been superseded by the Court of Appeal ruling that plaintiff failed to state a cause of action against STRAUCH-- an issue not existing at the time of appeal. By so ruling, the State Court of Appeal created a ***new dimension*** to this case, i.e., the question of whether or not a cause of action against STRAUCH was stated in the first place. It is that new dimension which is now brought in this petition to the U.S. Supreme Court.

(1) The first question presented, whether the Court of Appeal deprived plaintiff of liberty and property ***without due process of law*** by denying plaintiff notice and opportunity to be heard on the issue of Failure to State a Cause of Action against defendant STRAUCH, was presented in State court at the first possible opportunity to do so in the Petition for Rehearing (hereinafter "REH") to the Court of Appeal on pages 1-2 thereof, wherein plaintiff argued [APP.1].

Furthermore, in order to show the appellate court that indeed a cause of action ***was stated***, plaintiff presented that full argument in the REH replete with citations of supporting legal authorities specifically covering "False Arrest/False Imprisonment" (Third Cause of Action) [REH 2-15]; "Unreasonable Search" (Fourth Cause of Action) [REH 16-19]; "Assault, Battery, Excessive Force" (Fifth Cause of Action) [REH 19-21]; "Failure To Take Plaintiff Before A Magistrate" (Seventh Cause of Action) [REH 22-23]; "Intentional Infliction of Emotional Distress" (Tenth Cause of Action) [REH 23-26]; and "Conspiracy" (Second Cause of Action) [REH 26-39]. (See APP.2). By so doing, plaintiff placed the appellate court on notice that he has a viable argument to be heard and addressed in the proper forum on this issue. ***Compare APP.2 with the Court of Appeal Decision, beginning middle of page 9 through the end of Discussion III on page 19, to see numerous legal***

inadequacies and omissions, especially regarding False Arrest/False Imprisonment and STRAUCH's participation therein, as well as the Court's omission of discussion regarding pre-arraignment due process (Failure to Take Plaintiff Before a Magistrate) and law relating thereto.

Additionally, plaintiff brought to the attention of the Court of Appeal that the court in its decision ***misstated the facts*** alleged in the tort action; that in denying relief based on Failure to State a Cause of Action, the material facts that would state a cause of action were ***omitted*** from the court's written decision. Plaintiff specifically set forth in the REH examples of omitted material allegations. (See APP.3).

There being no appearance in the tort action by defendant STRAUCH, no responses by defense counsel are involved in this case.

The federal question of the denial of procedural due process on appeal was first brought to the attention of the Court of Appeal on page 2 of the REH when petitioner specifically stated "unless this court seriously considers petitioner's argument on this issue at this time and makes an informed and reasoned response to it by a written modified or supplemental decision reflecting the particulars of that consideration, petitioner will be deprived of procedural due process on this appeal which will in turn destroy the post-deprivation process of redress of alleged wrongdoing against defendant STRAUCH by this state tort action protected by the state and federal constitutions." (See APP.1).

Nevertheless the Court of Appeal summarily denied rehearing, failing to address the federal question.

Petitioner thereafter argued the violation of procedural due process resulting from that denial on pages 5-10 of the Petition for Review (hereinafter "RVW") to the State Supreme Court. [APP.4]. Review was likewise summarily denied, foreclosing notice and opportunity to be heard on the issue in the State courts which has deprived petitioner of

his state tort remedy against defendant STRAUCH.

(2) The second question presented, whether the Court of Appeal deprived plaintiff of liberty and property ***without due process of law*** by denying plaintiff notice and opportunity to be heard on the issue of Failure to Prove Damages against defendant STRAUCH, was presented at the first opportunity to the Court of Appeal on pages 49-56 of the REH, wherein plaintiff argued [APP.5].

There is no appearance in defense.

As with the first issue, the federal question of the violation of procedural due process on appeal was brought to the attention of the Court of Appeal at the first opportunity on page 2 of the REH (see APP.1) which was summarily denied. The question was then presented to the State Supreme Court on pages 10-12 of the Petition for Review (RVW) [APP.6] and was likewise summarily denied by that Court, foreclosing plaintiff's remedy of redress against defendant STRAUCH.

(3) The third question presented, whether the Court of Appeal deprived plaintiff of liberty and property ***without due process of law*** by denying him opportunity to be heard on the facts alleged in the complaint leading to (1) the bogus misdemeanor complaint and (2) the lack of subject matter jurisdiction of the municipal court in the criminal proceeding, was first presented to the appellate court at the first opportunity to do so on pages 47-49 of the REH [APP.7].

There is no appearance in defense.

The same federal question, i.e., the violation of procedural due process on appeal, was first presented to the Court of Appeal on page 2 of the REH (see APP.1) and was summarily denied. Petitioner argued the federal question to the State Supreme Court on pages 13-15 of the RVW [APP.8] which was likewise summarily denied by that Court, foreclosing all opportunity for redress against defendant STRAUCH in the underlying state tort action.

(4) The fourth question presented here, i.e., whether the Court of Appeal deprived plaintiff

of liberty and property ***without due process of law*** by acting in excess of its limited jurisdiction as a reviewing court, was presented to that court at the first opportunity to do so on pages 46-47 of the REH [APP.9].

There is no appearance in defense. The same federal question regarding the violation of procedural due process on appeal was first presented on page 2 of the REH (APP.1) and summarily denied. The question was then presented to the State Supreme Court on pages 16-17 of the RVW [APP.10] and review was summarily denied, depriving plaintiff of redress against defendant STRAUCH in the State court system.

ARGUMENT

(1) The California Court of Appeal deprived plaintiff of liberty and property without due process of law by denying plaintiff notice and opportunity to be heard in re Failure to State a Cause of Action against defendant STRAUCH.

The statement of the Court of Appeal in its decision which utterly ***destroys this appeal*** is: "The real question to be resolved ***on appeal*** [emph.added] is whether the trial court properly granted judgment against plaintiff, i.e., ***whether plaintiff's first amended complaint fails to state a cause of action against defendant.***" [emph.added]. [Decision, top of p.9]. Here is where the Court of Appeal tried to "slip plaintiff a mickey". While the "real question" ***on appeal*** is whether the trial court properly granted judgment against plaintiff (the first issue presented on appeal by plaintiff), it ***IS NOT*** "whether plaintiff's first amended complaint fails to state a cause of action against defendant" (the "mickey"). The trial court did not rule upon nor question whether a cause of action was stated, nor was that issue brought up at any time in any fashion whatsoever in trial court. Therefore ***IT WAS NOT, NOR COULD IT BE, AN ISSUE ON APPEAL.*** In the interest of fair play and justice, due process of law establishes that plaintiff must be given notice and opportunity to

be heard on that issue. The Court of Appeal ***must remand*** the case to the trial court, after having found that the "cause of action" issue is the "real question to be resolved" herein-- not treat it as an issue ***on appeal*** when it was not, thereby foreclosing to plaintiff opportunity to be heard, i.e., to be able to argue the issue in trial court and ***THEN*** bring the issue ***on appeal.***

The California Court of Appeal and the State Supreme Court have both refused to address this fundamental right to be heard (a federal question). Furthermore, the Court of Appeal never raised the issue during oral argument at which time plaintiff would have at least had an opportunity to orally argue the issue prior to the court's ruling. Further, plaintiff would have had an opportunity to request permission to prepare a supplemental appellate brief to argue that issue in writing, supported by points and authorities showing that a cause of action indeed was alleged. [REH p.1; RVW p.5].

However, having made that final ruling, it was incumbent upon the Court of Appeal to remand the case to the trial court for further proceedings based on its decision, wherein plaintiff would have opportunity to respond. [See RVW p.5].

By failing to provide plaintiff notice and opportunity to present legal argument, the Court of Appeal has seriously prejudiced plaintiff and caused him irreparable harm and injury by foreclosing him from redress, and upon denial of review by the State Supreme Court, plaintiff was denied all redress in the state court system. Plaintiff was placed in the untenable position of having no other alternative but to present his argument on that issue in the Petition for Rehearing (REH) which, as shown by the court's summary denial of rehearing, was not a viable remedy comporting with procedural due process. Plaintiff was flatly "closed out" from this fundamental right of redress in the courts. [REH p.2; RVW pp 5-6].

Plaintiff placed the Court of Appeal on notice by his REH that indeed a cause of action

had been properly alleged against defendant STRAUCH according to law. [REH pp 2-39, set forth in the Appendix]. Plaintiff's legal arguments therein contained clearly show the insufficiency of the court's decision both on facts material to the issue (which were simply omitted from the opinion) and the law applicable thereto.

Plaintiff also set forth verbatim Paragraph 21 of the first amended complaint (see Appendix) on page 7 of the Petition for Review to the State Supreme Court showing that by law, ***that paragraph alone*** is legally sufficient to carry the entire tort action against defendant STRAUCH. That paragraph alleges the elements of the cause of action of False Arrest/False Imprisonment, i.e., an arrest without legal process (warrantless) followed by imprisonment which is itself an element of damages [REH p.3], and alleges the joint participation by defendant STRAUCH with the police in that cause of action. As a proximate result of defendant STRAUCH's joint participation, plaintiff suffered six consecutive days of imprisonment without due process of law or any magistral review. [RVW p.7]. The fact that "[a]n arrest without a warrant is not ***per se*** unlawful" [Decision, p.14] is not relevant to stating a ***cause of action*** for false (unlawful) arrest. As plaintiff has shown in the REH at p.15 [see APP.2], the State Supreme Court has recognized that by enacting Evidence Code §664, the Legislature "has specifically ***excepted*** the issue of the lawfulness of a warrantless arrest from the general presumption..." [emph.added], citing Cervantez v. J.C. Penney Co. (1979) 24 Cal.3d 579, 592 n.8. An arrest without a warrant ***is per se unlawful*** if probable cause therefor is not determined by a magistrate prior to arraignment on criminal charges [see REH p.12]. The validity of an arrest is not determined by "a reasonable good faith belief" [Decision p.12], "reasonable cause to believe..." [Decision p.13], "probable cause to believe" [Decision p.15], ***held by the person or officer at the scene.*** That determination must be made by a ***magistrate***-- not

by STRAUCH. [REH pp 13-14]. Furthermore, the "criminal conviction" is not relevant to whether a cause of action was stated or damages alleged [Decision p.13], especially when ***material facts are alleged*** showing the entire criminal proceeding itself to be without jurisdiction. As stated above, Paragraph 21 of the first amended complaint contains the elements of a cause of action for False Imprisonment as well as a ***prima facie*** allegation of damages. [REH pp 2-3; see APP.2].

Applying the law to the facts alleged, the California courts have established: "All that need be alleged to charge unlawful arrest is the arrest without process, the imprisonment, and the damages." Collins v. Owens (1947) 77 Cal.App.2d 713, 715. [REH p.2; RVW p.8]. "The elements of a cause of action for false imprisonment are an arrest without legal process, imprisonment, and damages." Ramsden v. Western Union (1977) 71 Cal.App.3d 873, 879. [REH p.3; RVW p.8]. "'False arrest' and 'false imprisonment' are not separate torts...." Collins v. City/County of San Francisco (1975) 50 Cal.App.3d 671, 673. [REH p.2; RVW p.8]. "The fact that the arrest was made by Los Angeles police officers and not directly by defendants does not render them immune, because a party who 'authorizes, encourages, directs, or assists an officer to do an unlawful act, or procures an unlawful arrest, without process, or participates in the unlawful arrest or imprisonment, is liable.'" DuLac v. Perma Trans Products, Inc. (1980) 103 Cal.App.3d 937, 941. [REH p.3; RVW p.8]. "All who take part in or assist in the commission of a false imprisonment are joint tortfeasors, and may be joined as defendants without an allegation of proof of a conspiracy." Oppenheimer v. City of Los Angeles (1951) 104 Cal.App.2d 551, 553; Harden v. San Francisco Bay etc. (1989) 215 Cal.App.3d 7, 15. [REH p.3; RVW p.8].

Furthermore, the California Court of Appeal has ruled: "The facts of a properly pleaded complaint, i.e., the material facts, and 'the [legal] right [which] is inferred therefrom' provide the

woof and warp of a cause of action. It is the law which provides the organizing principle, i.e., the legal standard, by which the facts are made legally significant (i.e., material).... 'The law and facts of a case bear a chicken and egg relationship. The law identifies the ***kinds*** of facts which are material to the case. The facts delimit the applicable propositions of law.'" Perry v. Robertson (1988) 201 Cal.App.3d 333, 339. Plaintiff's complaint alleges those elements which form the ***material facts*** according to the "law which ***provides*** the organizing principle... by which the facts are made legally significant...." Id. p.339. [RVW pp 8-9].

Accordingly, to properly determine whether or not a cause of action is stated, the court must state the material facts ***completely*** and ***accurately*** as alleged in the complaint. The Court of Appeal failed to do so in this case. The appellate decision is based upon the court's omissions and misstatements of material fact throughout its "Statement of Facts" on pp 2-4 of the decision and elsewhere throughout the decision. This matter was brought to the court's attention as Argument 2 of the REH on pp 39-46 (set forth in the Appendix). [RVW p.9]. The court's "Statement of Facts" fails to reflect the direct counts alleging specific causes of action, for example Count III of the complaint alleging False Arrest/False Imprisonment. The ***material facts*** that indeed by law allege a cause of action against defendant STRAUCH are not mentioned in the court's decision. [RVW p.9].

All of this information was presented to the Court of Appeal in the Petition for Rehearing and to the State Supreme Court in the Petition for Review, both of which were summarily denied, wiping out all opportunity to be heard. The appellate court deprived plaintiff of remedy by appeal when it denied appellate relief by making a fallacious ruling that a cause of action was not alleged against defendant STRAUCH based on an inaccurate and incomplete statement of material facts that do appear on the face of the first

amended complaint (see Appendix) and which do allege a valid cause of action against STRAUCH. Plaintiff, in good faith, did the only thing he could do-- present the arguments in REH. By so doing, the court was placed on notice that an argument based on law could be made and that plaintiff had a right to be heard thereon.

By totally ignoring the arguments, the California courts at all levels have refused to address the law of this case and the law remains unaddressed to date. Plaintiff has thereby been deprived of liberty and property ***without due process of law*** in violation of the Fifth and Fourteenth Amendments to the United States Constitution which has destroyed plaintiff's state tort remedy within the meaning of Daniels v. Williams (1986) 474 U.S. 327, 338-339, and Zinermon v. Burch (1990) 110 S.Ct. 975, 983.

(2) The Court of Appeal deprived plaintiff of liberty and property without due process of law by denying plaintiff notice and opportunity to be heard in re Failure to Prove Damages against defendant STRAUCH.

The issue of proving damages alleged in the complaint must necessarily be based upon the complaint before the court, i.e., the tort complaint filed by the plaintiff-- not the criminal complaint filed by other than the plaintiff. The Court of Appeal is the first court to address the tort complaint. Plaintiff stated in his opening brief that the trial court focused its attention only on the underlying criminal complaint-- not the tort complaint. (See OB pp 16-19). The trial court's decision was not based on the tort complaint at all-- which is what plaintiff argued on appeal. (See Argument II, OB pp 14-26).

By refusing to address that factual basis set forth in the appellate brief, the Court of Appeal again deprived plaintiff of procedural due process on appeal. The Court of Appeal, in ruling on this issue, relied upon the trial court's asking the question "Any other evidence?" which, as the record reflects, was limited to the scope of

criminal matters which the trial judge chose to address rather than the civil tort complaint before the court. The criminal case was not the current subject matter to be addressed. The record shows that the trial judge prevented plaintiff from presenting testimony regarding the tort action for "false arrest and false imprisonment." The judge wasn't interested in ***that subject matter.*** (See OB p.18). [Decision p.7; RVW p.10].

Despite the fact that plaintiff brought to the attention of the Court of Appeal in his opening brief that false footing upon which the trial court's determination regarding damages was based, the appellate court did not address it, and moreover failed to remand the case to the trial court for appropriate proceedings based on its own decision regarding that issue. Thus, plaintiff was denied notice and opportunity to be heard on the subject of damages based on the tort complaint. [RVW p.11].

As argued in the previous issue, Paragraph 21 of the first amended complaint alleges a ***prima facie*** case for damages. "A cause of action for false imprisonment entitling plaintiff to relief does not require any allegation of damages other than the fact of confinement itself." DuLac v. Perma Trans Products, Inc. (supra) 103 Cal.App.3d at 945. Having met that requirement, plaintiff has alleged damages. Law itself settles this matter. Default admits to the allegation of imprisonment, and this damage must be accepted as true. The complaint itself attaches proof of the damage of imprisonment (see CT 143 "Booking"). [RVW p.11].

This matter was brought to the court's attention [REH p.3, p.49], however rehearing was summarily denied without addressing it. Plaintiff also brought to the court's attention that his allegations throughout the complaint were sufficient to prove his entitlement to damages on other counts as well. [REH pp 49-56]. Thus, as with the first issue, plaintiff has placed the court on notice that he has a viable argument regarding his entitlement to damages against defendant STRAUCH in this tort

action and he should have been given an opportunity to be heard. [RVW p.11].

The State Supreme Court summarily denied review of the appellate decision. By completely ignoring the arguments presented by plaintiff and his right to be heard thereon, the California courts have not addressed the law regarding the issue of damages against defendant STRAUCH in this tort action and it remains unaddressed to this day. Plaintiff has thereby been deprived of liberty and property ***without due process of law*** in violation of the Fifth and Fourteenth Amendments to the United States Constitution which has destroyed plaintiff's state tort remedy for redress against defendant STRAUCH within the meaning of Daniels v. Williams (1986) 474 U.S. 327, 338-339, and Zinermon v. Burch (1990) 110 S.Ct. 975, 983.

(3) The Court of Appeal deprived plaintiff of liberty and property without due process of law by denying plaintiff notice and opportunity to be heard on the facts alleged in the complaint leading to (1) the bogus misdemeanor complaint and (2) the lack of subject matter jurisdiction of the municipal court in the underlying criminal proceeding.

The rationale offered by the Court of Appeal regarding plaintiff's allegations of a bogus misdemeanor complaint and the lack of subject matter jurisdiction in the municipal court over the criminal proceedings is that they "are questions of law" and "are not facts which must be deemed established by defendant's failure to answer." [Decision p.7]. However, the court fails to consider ***the facts alleged*** in the complaint establishing those "questions of law" which indeed are "facts which must be deemed established by defendant's failure to answer."

"Questions of law" do not exist in a vacuum-- they must be decided on the ***material facts alleged in the complaint*** leading to those "questions of law." "The law identifies the ***kinds*** of facts which are material to the case. The facts delimit the applicable propositions of law." Perry

v. Robertson (supra) 201 Cal.App.3d at 339. The Court of Appeal fails to consider the ***material facts*** alleged in the complaint which identify the bogus misdemeanor complaint and the lack of subject matter jurisdiction of the municipal court-- facts which according to law must be deemed established by defendant's failure to answer. [RVW p.14].

By failing to remand the matter to the trial court for appropriate procedures pursuant to its appellate decision, the Court of Appeal denied plaintiff notice and opportunity to be heard on the material facts alleged in the complaint leading to the fact that a "bogus misdemeanor complaint" was filed against plaintiff to his damage and detriment, and that the "municipal court lacked subject matter jurisdiction in the criminal proceeding" --both of which "questions of law" have been proved by evidence (facts) submitted in this case. [RVW p.15].

Plaintiff brought this matter to the attention of the Court of Appeal in the REH, stating "The failure of defendants to take plaintiff before a magistrate regarding the warrantless felony arrest and the failure of defendants to take the felony arrest to the District Attorney for his pre-prosecution evaluation and decision, plus the fact that the police unilaterally disposed of the felony arrest and decided to proceed with misdemeanor charges against plaintiff, are pure facts that have been alleged in the complaint which must be deemed established by defendant's default." [REH p.48; RVW p.14].

Plaintiff explained the distinction between the ***pre-deprivation process*** (i.e., the post-arrest process that was to have been followed) and the ***post-deprivation process*** (i.e., the state tort action currently before the court) to redress the alleged wrongs committed during the pre-deprivation process [REH p.48] (citing Zinermon v. Burch (1990) 110 S.Ct. 975, 986-990), and stated "By operation of law, evidence of what happened at the criminal proceeding does not and cannot replace or supersede evidence of the tort action now before the court." [REH p.49; RVW p.15].

The Court of Appeal has ignored all of these arguments by summarily denying rehearing, followed by a summary denial of review by the State Supreme Court. Thus, the California courts have failed to address the law regarding the alleged bogus misdemeanor complaint and lack of subject matter jurisdiction of the municipal court in plaintiff's underlying criminal proceeding and plaintiff's right to be heard on the tort violations leading to those allegations. Plaintiff has been deprived of liberty and property ***without due process of law*** in violation of the Fifth and Fourteenth Amendments to the United States Constitution which has destroyed plaintiff's state tort remedy for redress against defendant STRAUCH within the meaning of Daniels v. Williams (1986) 474 U.S. 327, 338-339, and Zinermon v. Burch (1990) 110 S.Ct. 975, 983.

(4) The Court of Appeal deprived plaintiff of liberty and property without due process of law by acting in excess of its limited jurisdiction as a reviewing court.

A reading of the decision shows that the Court of Appeal went beyond deciding whether the complaint failed to state a cause of action and failed to prove damages and attempted to act in the role of a "magistrate" in a post-arrest criminal context to now determine belatedly what a magistrate ***might have determined*** regarding probable cause for plaintiff's arrest by defendant STRAUCH and the police on May 11, 1986 [Decision pp 11-17]. Based on their second guess of what a magistrate might have determined had there been one, the appellate court concluded plaintiff did not allege a cause of action against STRAUCH. [RVW p.16].

The issue before the court in this tort action is not whether there was probable cause for plaintiff's arrest, but whether ***post-arrest due process was followed*** by submitting plaintiff's warrantless arrest to a magistrate as required by law within the meaning of Penal Code §§825, 849(a), Article I, Section 13 of the California Constitution, and the Fourth and Fifth Amendments

to the United States Constitution, for a judicial determination of probable cause. What a magistrate's determination ***might have been*** in retrospect (hindsight) had the regular post-arrest processes been followed, is of no consequence at this time, and cannot save the defendant from liability. Under Article I, Section 13 of the California Constitution and the Fourth Amendment to the United States Constitution, an arrest without judicial process fails upon the same legal basis as an arrest determined to be without probable cause-- neither fares the better. [RVW p.16].

The tort complaint alleges the fact that at no time was plaintiff's (criminal) case taken before a magistrate for a probable cause determination of plaintiff's arrest, and that fact taken as true, along with the allegations of false arrest and false imprisonment by the police, assisted by defendant STRAUCH playing an active role in such arrest, automatically results in liability on STRAUCH's part, entitling plaintiff to a judgment in his favor against STRAUCH on default. [RVW pp 16-17]. Any determination of probable cause by the appellate court within this ***civil*** appeal challenging this ommision in the ***criminal*** process is out of order and in excess of appellate jurisdiction. That determination was not made at the time when due during the criminal proceeding according to law, and the matter now before the court is the civil tort violations that had already occurred. A corpse cannot be resurrected to life six years after its burial.

Plaintiff brought this matter to the attention of the Court of Appeal [REH pp 46-47], however it was ignored by summary denial of rehearing. The State Supreme Court likewise ignored the issue by summary denial of review. By ignoring the argument on this issue, the California courts have failed to address the law regarding actions taken in excess of appellate jurisdiction as described by plaintiff and it remains unaddressed to this day. Plaintiff has thus been deprived of liberty and property ***without due process of law*** in violation of

the Fifth and Fourteenth Amendments to the United States Constitution which has destroyed plaintiff's state tort remedy for redress against defendant STRAUCH within the meaning of Daniels v. Williams (1986) 474 U.S. 327, 338-339, and Zinermon v. Burch (1990) 110 S.Ct. 975, 983.

CONCLUSION -

Petitioner requests the United States Supreme Court rule on the federal questions at this time and promptly take action necessary to enforce the constitutional guarantees of appropriate state procedures for providing a State judicial remedy to redress alleged wrongdoing under State statute and tort law.

Dated: November 16, 1992

Ronald Branson

RONALD BRANSON
Plaintiff/Petitioner

* * *

APPENDIX

Contents of Appendix

DECISION OF THE CALIFORNIA COURT OF APPEAL

ORDERS OF THE TRIAL COURT BEING APPEALED
1. Denial of Motion to Vacate Judgment
   Judgment By Court After Default
   Ruling on Submitted Matter

ORDER DENYING REHEARING

ORDER DENYING REVIEW

NOTICE OF APPEAL

FIRST AMENDED COMPLAINT

PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS & STATUTES

PERTINENT QUOTATIONS OF SPECIFIC PORTIONS OF RECORD (Taken from Statement of the Case)

* * *

CONCLUSION

Petitioner respectfully requests that this Honorable Court rule on the federal questions in this case and promptly take action necessary to enforce the constitutional guarantees of adequate state procedures for providing a state forum to remedy violations of rights under Federal statute and the law.

Dated: November 26, 1990

Respectfully submitted,

ARNOLD [illegible]
Plaintiff/Appellant

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* * *

DECISION OF THE CALIFORNIA COURT OF APPEAL

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

RONALD L. BRANSON, Plaintiff and Appellant,	)	B053785 (Super. Ct. No. NWC 30307)
vs.	)	
CRAIG J. STRAUCH, Defendant and Respondent.	)	COURT OF APPEAL SECOND DIST. F I L E D JUN 3, 1992 JOSEPH A. LANE, Clerk G.MERCIER Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard G. Kolostian, Judge. Affirmed.

Ronald L. Branson, in pro. per., for plaintiff and Appellant.

No appearance for Defendant and Respondent.

INTRODUCTION

Plaintiff Ronald L. Branson appeals from a judgment in favor of defendant Craig J. Strauch entered after defendant's default.

STATEMENT OF FACTS 1/

Shortly after 12:00 a.m., on May 11, 1986, plaintiff was standing by an automobile parked near the intersection of Strathern and Capistrano Avenue in Canoga Park; two of his friends were with him. The automobile appeared to be abandoned; the passenger side was wrecked, it

had not been moved for two to three months, and its registration was outdated. Defendant accosted them and accused them of attempting to burglarize the automobile. Plaintiff offered an apology and explanation, but defendant detained him, took his identification and telephoned the police. On plaintiff's advice, his friends left the area while plaintiff waited for the police.

Officers from the Los Angeles Police Department arrived at about 12:20 a.m. Defendant identified plaintiff as

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1. The statement of facts is taken from the allegations of plaintiff's complaint and is a general summary of what transpired. More specific allegations will be discussed later in this opinion as they become relevant.

the suspect; the police conducted a pat-down search and handcuffed him. Defendant examined the automobile and told the police he saw no evidence of tampering. He conferred with the police, then filled out a private person's arrest report which they supplied to him. The report was not supported by oath or affirmation, no warrant was obtained. Plaintiff was notified that he was under arrest.

The police then decided to perform their own arrest of plaintiff, based on information received from defendant; this information was subjective and uncorroborated. Defendant told the police he had seen plaintiff and one of his friends attempt to open the doors of the automobile and plaintiff then open the hood of the automobile. The police ignored plaintiff's explanation for his conduct, but arrested him for felony attempted burglary from a motor vehicle.

Plaintiff was taken to the West Valley Police Station. He demanded to be taken immediately before a magistrate but was told he was going to be taken to jail. He was searched over his objections. He was then ordered to undress for a

body cavity search; he objected. The police shot him with taser darts, removed his clothing and searched his body. His clothing was returned and he dressed. The police then took him to the hospital to have the taser darts removed.

The following day, the police told plaintiff they would let him see a magistrate if he let them fingerprint him; he refused. Later that evening, they told him they would

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fingerprint him the following morning. In the morning, armed officers came to plaintiff's jail cell and took his fingerprints over his objection.

The next day, May 14, 1986, the police decided to reduce the charge against plaintiff to a misdemeanor, and they had the city attorney's office draw up a misdemeanor complaint against him. The complaint was filed in the municipal court, and a commissioner issued an order remanding plaintiff to custody. Plaintiff was transferred to the custody of the Los Angeles County Sheriff's Department and transported to county jail.

On May 16, 1986, plaintiff was transported to the municipal court and brought before the commissioner. She arraigned plaintiff, entered his not guilty plea, denied his request to be released on his own recognizance and set the case for trial. Plaintiff was returned to county jail, and he was released on bail that evening. Eventually, plaintiff was tried and convicted of tampering with a motor vehicle.

CONTENTIONS

I

Plaintiff contends a default judgment could not be legally entered against him.

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II

Plaintiff further contends he was not given a meaningful hearing at the default prove-up.

III

Plaintiff asserts the trial court in this action did not have the right to rely on the criminal complaint against him.

IV

Finally, plaintiff contends a default judgment involving damages should not be made prior to trial on the merits as to the answering co-conspirators in this action.

DISCUSSION

I

Plaintiff contends a default judgment could not be legally entered against him. The contention lacks merit. After a default was entered against defendant, a default prove-up was held. The trial court concluded plaintiff "failed to meet his burden of proof" and rendered judgment in

favor of defendant and against plaintiff, with plaintiff to recover nothing from defendant.

In general, a defendant's default admits the truth of the allegations in a plaintiff's complaint and entitles the plaintiff to a judgment for the damages claimed. However, there are exceptions to this rule. Where the allegations of the complaint do not state a cause of action the plaintiff is not entitled to a judgment, even if the defendant is in default. (Taliaferro v. Taliaferro (1959) 171 Cal.App.2d 1, 8-9; 6 Witkin Cal.Procedure (3d ed. 1985) Proceedings Without Trial, § 249, p.548; see also Csordas v. United Slate Tile etc. Roofers (1960) 177 Cal.App.2d 184, 186.) Likewise, where the complaint does state a cause of action but plaintiff does not prove any damages, the plaintiff is not entitled to a judgment. (Taliaferro, supra, at pp 8-9; see also Barragan v. Banco BCH (1986) 188 Cal.App.3d 283, 302.) In such a case, the trial court may refuse to enter a default judgment and may enter a judgment that the plaintiff take nothing by his complaint. (Taliaferro, supra, at pp

3, 8-9.) This is what occurred in the instant case, and such a judgment could legally be entered against plaintiff.

II

Plaintiff further contends he was not given a meaningful hearing at the default prove-up. We disagree.

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First, plaintiff claims that he was not given the opportunity to present all of his evidence at the default prove-up hearing. This claim is belied by the record. The transcript of the hearing shows the trial court asked plaintiff, "Any other evidence?" Plaintiff responded, "I believe that pretty well covers it." Clearly, the trial court did not prevent plaintiff from presenting all of his available evidence.

Next, plaintiff complains that the trial court was not interested in the facts at issue in his civil action but instead wanted to know what happened in the criminal case against plaintiff. Plaintiff contends this was irrelevant, in that his first amended complaint alleges a "bogus misdemeanor complaint" and a lack of subject matter jurisdiction in the municipal court over the criminal proveedings. However, the validity of the misdemeanor complaint and the jurisdiction of the municipal court over the criminal proceedings are questions of law. Plaintiff's allegations in this regard are not facts which must be deemed established by defendant's failure to answer. (See 6 Witkin Cal. Procedure, supra, Proceedings Without Trial, §§243, 249, pp 545-546, 548.) Thus, plaintiff's allegations did not render evidence of what occurred in the criminal proceedings irrelevant.

Finally, plaintiff argues the trial court should have explained to him what it required as proof, so he could meet

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his burden of proof. However, plaintiff cites no authority to suggest it is the duty of a trial court to explain to a litigant how to present his case. While plaintiff was representing himself and thus may have been unfamiliar with the way in which to present his case, a party appearing in pro. per. is entitled to no special consideration. (Harding v. Collazo (1986) 177 Cal.App.3d 1044, 1056.) The trial court did not err in failing to spell out for plaintiff exactly what his burden of proof entailed.

III

Plaintiff asserts the trial court in this action did not have the right to rely on the criminal complaint against him. We disagree.

Plaintiff claims numerous violations of numerous rights during the criminal proceedings rendered the criminal complaint "bogus" and precluded the trial court from relying on the criminal complaint. However, plaintiff fails to demonstrate how the trial court relied on the criminal complaint and how it worked to his detriment. It is plaintiff's burden to demonstrate both error and prejudice resulting therefrom in order to obtain reversal of the judgment. (Mize v. Atchison, T. & S.F. Ry. Co. (1975) 46 Cal.App.3d 436, 450; Stein v. Hassen (1973) 34 Cal.App.3d 294, 299.)

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The real question to be resolved on appeal is whether the trial court properly granted judgment against plaintiff, i.e., whether plaintiff's first amended complaint fails to state a cause of action against defendant. (Taliaferro v. Taliaferro, supra, 171 Cal.App.2d at pp 8-9; 6 Witkin Cal. Procedure3, supra, Proceedings Without Trial, §249, p.548) or whether plaintiff failed to prove damages (Taliaferro, supra, at pp 8-9; see also Barragan v. Banco BCH, supra, 188 Cal.App.3d at p.302.) If plaintiff failed to state a cause of action against defendant or to prove damages, he is not entitled to reversal of the judgment.

In plaintiff's third cause of action for false

arrest and false imprisonment, he alleged defendant "willfully, intentionally, maliciously, knowingly, and in bad faith, unlawfully detain[ed] plaintiff, grab[bed] property from plaintiff's person, and conduct[ed] a citizen's misdemeanor arrest of plaintiff without a warrant or other process, and then encouraged, directed, and assisted [the police] in procuring a false felony arrest of plaintiff, without warrant or process, with intent to induce such false arrest." Defendant gave the police evidence which "stimulated plaintiff's unlawful arrest, without the supporting oath or affirmation as required by [a]rticle I, [s]ection 13 of the California Constitution." Defendant also "willingly, knowingly, intentionally, and maliciously accessed and made available as an exhibit at his criminal trial a computer

printout of his Department of Motor Vehicles record, depriving plaintiff of his right to have his person secure from unreasonable seizure, search, and unjustifiable force without due process of law, in violation of [a]rticle I, [s]ections 1, 7(a) and 13 of the California Constitution."

Other allegations in the first amended complaint are that defendant accosted plaintiff and accused him of attempting to burglarize an automobile which appeared to be "(1) totally wrecked on the passenger side; (2) unmoved for approximately two to three months...; (3) sitting abandoned upon a public street with two-year outdated registration tabs (1984), alongside a public schoolyard not associated with any private residence or building." Defendant "was not interested in plaintiff's apology or explanation which plaintiff attempted to give him as the reason he and his friends were examining said vehicle, but instead defendant... unlawfully detained plaintiff without a warrant or other process...."

Defendant then "filled out and affixed his name to an L.A.P.D. supplied Private Person's Arrest Report form without submitting any oath or

affirmation as required by law, without a warrant or other process, and without any other lawful means to satisfy [s]tate constitutional and statutory mandates." The police later made a warrantless felony arrest of plaintiff, based solely on defendant's "subjective, uncorroborated, hearsay statements," made without oath or affirmation. Defendant signed a preliminary investigation report containing

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such statements; the report failed to mention plaintiff's explanation for his conduct, the condition of the vehicle or the fact it was illegally parked on a public street.

According to the arrest report, plaintiff was arrested for the attempted violation of Penal Code section 459, burglary from a locked motor vehicle. Defendant told the arresting officers that at approximately 12:05 a.m. he heard an automobile park across the street from his residence. Due to the fact that in the past two months his roommates had been the victims of two burglaries from motor vehicles, he looked out the window. He saw a Buick parked directly behind his roommate's automobile. Plaintiff and a companion got out of the Buick and went over to his roommate's automobile; the companion was carrying a medium-sized screwdriver. The two pulled on the door handles in an attempt to open the doors. Defendant went to his room to get his identification card and a flashlight. When he came out of his residence, plaintiff had opened the hood of the automobile; as defendant walked across the street, plaintiff closed the hood. Defendant identified himself, obtained identification from plaintiff and notified the police. In the preliminary investigation report, defendant also indicated he saw plaintiff attempt to open the automobile door then open its hood.

False arrest or imprisonment is the unlawful restraint of another against his will. (5 Witkin

Summary of Cal.Law (9th ed. 1988) Torts, §378, pp 463-464.) A private person

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may arrest another individual "[f]or a public offense committed or attempted in his presence." (Pen. Code, §837, subd. 1.) The Penal Code does not require that the person making the arrest have a warrant supported by oath or affirmation to do so or comply with any other process before making the arrest. (People v. McCarty (1958) 164 Cal.App.2d 322, 328.) Thus, the fact defendant arrested plaintiff without a warrant and without taking any legal procedures before doing so does not make that arrest unlawful.

Where the arrest is based upon conduct committed in the arresting person's presence, the arrest is valid if, based on that conduct, the person making the arrest had a reasonable good faith belief the conduct constituted a public offense. (Gomez v. Garcia (1980) 112 Cal.App.3d 392, 397; see also Collyer v. S.H. Kress & Co. (1936) 5 Cal.2d 175, 180-181.) If the conduct actually constituted a public offense, the arrest is valid, even if made for a different offense. (Gomez, supra, at p.397.)

At the default prove-up, plaintiff acknowledged he was convicted of tampering with a vehicle. This is a misdemeanor, (Veh. Code §§10852, 40000.9.) The arrest report indicated defendant observed conduct which constituted tampering with a vehicle and which might even have provided the basis for a reasonable belief plaintiff was attempting to burglarize the vehicle. Plaintiff's first amended complaint does not allege his conduct was not what defendant claimed it was, only that

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defendant did not believe his explanation as to why he was engaging in the conduct. Even if plaintiff's explanation was legitimate and he did not have the intent to commit a felony which is an

element of burglary (Pen. Code, §459), there is no allegation the explanation was a complete defense to a charge of tampering with a vehicle.

Plaintiff did allege defendant acted "willfully, intentionally, maliciously, knowingly, and in bad faith." However, where reasonable cause to arrest exists, secret intentions, hopes or purposes, or bad faith will not negate it. (People v. McClure (1974) 39 Cal.App.3d 64, 68; People v. McKelvy (1972) 23 Cal.App.3d 1027, 1036-1037.) Thus even if defendant acted with malice and bad faith, if he did have reasonable cause to believe plaintiff was committing a public offense in his presence, the arrest was still valid.

Based on the foregoing, it is clear plaintiff did not adequately allege a factual basis establishing a cause of action for false arrest and imprisonment based on defendant's citizen's arrest. He did not allege facts which would establish the arrest unlawful. Additionally, his criminal conviction of an offense based on the conduct for which he was arrested would tend to show he was not damaged by the alleged false arrest. (See Cameron v. Fogarty (2d Cir. 1986) 806 F.2d 380, 387-388, certiorari den. (1987) 481 U.S. 1016.)

Plaintiff also alleged defendant was liable for false arrest for encouraging, directing, and assisting the police in

"procuring a false felony arrest of plaintiff, without warrant or process, with intent to induce such false arrest." Defendant gave the police evidence which "stimulated plaintiff's unlawful arrest, without the supporting oath or affirmation as required by [a]rticle I, [s]ection 13 of the California Constitution."

A warrant supported by oath or affirmation is not required for an arrest by a plice officer. A police officer may make an arrest without a warrant: "1. Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence. 2.

When a person arrested has committed a felony, although not in his presence. 3. Whenever he has reasonable cause to believe that the person arrested has committed a felony, whether or not a felony has in fact been committed." (Pen. Code, §836.) Thus, defendant cannot be liable for false arrest merely because he gave information to the police which caused them to arrest plaintiff without the oath or affirmation which must support an arrest warrant. An arrest without a warrant is not per se unlawful.

Additionally, defendant cannot be liable for false arrest if he merely truthfully recounted his observations to the police, and they arrested plaintiff based on the information he gave them. (Gomez v. Garcia, supra, 112 Cal.App.3d at p.399.) Moreover, "'[o]ne who causes another to be prosecuted for a crime is not liable in damages therefor,

unless he acts through malice and without probable cause; and it is the policy of the law that whenever a citizen shall have reasonable cause to believe that a crime has been committed he shall be protected in his efforts to secure punishment of the offender.'" (Id. at pp 399-400, quoting from Dunlap v. New Zealand F. & M.I. Co. (1895) 109 Cal. 365, 369, emphasis added.) Thus, if defendant had probable cause to believe plaintiff had committed a public offense and sought his arrest by truthfully telling the police officers what he had observed, he is not liable for false arrest.

Nowhere does plaintiff allege defendant did not truthfully tell the officers what he had observed or that he did not have reasonable cause to believe a crime had been committed. Thus, the first amended complaint does not state a cause of action for false arrest against defendant based on plaintiff's arrest by the police.

Plaintiff's tenth cause of action is for intentional infliction of emotional distress. He

alleged defendant "willfully, intentionally, maliciously, and in bad faith, inflict[ed] extreme and severe emotional distress upon plaintiff by [his] outrageous conduct... by... making subjective and uncorroborated statements, unsupported by oath or affirmation, to the police regarding plaintiff's conduct, without regard to plaintiff's apology and explanation, knowing that such subjective reporting would to a substantial certainty lead to the warrantless arrest and imprisonment that followed."

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The elements of a cause of action for intentional infliction of emotional distress are "(1) extreme or outrageous conduct by the defendant with the intent of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. [Citations.]... Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community. [Citations.]" (Cervantes v. J.C. Penney Co. (1979) 24 Cal.3d 579, 593.) In other words, the defendant's conduct must "go beyond all possible bounds of decency, and... be regarded as atrocious or utterly intolerable in a civilized community." (Rulon-Miller v. International Business Machines Corp. (1984) 162 Cal.App.3d 241, 254.)

As previously mentioned, there is no requirement that statements given to police which are used to form probable cause to arrest be supported by oath or affirmation, and a warrantless arrest based on information received from an individual is not per se invalid or a false arrest. Nor does the information have to be corroborated; indeed, uncorroborated testimony is sufficient to sustain a conviction. (See Evid. Code, §411; CALJIC No. 2.27.) Plaintiff points to no authority to suggest a person who observes

conduct which he or she believes constitutes a crime must accept the apology and

----------16----------

explanation of the person doing the conduct and either refrain from reporting the conduct to the police or give to the police an objective report of the incident which includes the other person's explanation. Hence, plaintiff failed to allege defendant did anything wrong, let alone anything so outrageous as to "exceed all bounds of that usually tolerated in a civilized community." (Cervantez v. J.C. Penney Co., supra, 24 Cal.3d at p.593.) Therefore, plaintiff failed to state a cause of action for intentional infliction of emotional distress.

Plaintiff's eleventh cause of action is for negligence, the elements of which are (1) defendant's legal duty of care to plaintiff; (2) breach of that duty; (3) proximately causing; (4) injury to plaintiff. (4 Witkin Cal. Procedure, supra, Pleading, §527, p.558.) A complaint must allege facts which show each element of the cause of action. (Id. at p.559.) As can be gleaned from previous discussions, plaintiff has alleged no breached duty on the part of defendant. The duty alleged -- not to arrest or cause the arrest of another based on subjective, uncorroborated statements not supported by oath or affirmation -- does not exist. Therefore, plaintiff has failed to state a cause of action for negligence as well.

In plaintiff's second cause of action for conspiracy, he alleged defendant and others "acting pursuant to a policy, rule, custom, practice, and usage, knowingly and deliberately

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promulgated, adopted and applied by each defendant in bad faith against plaintiff, after plaintiff had asserted his constitutional rights, knowingly, deliberately, conspired and agreed among themselves and others to, and in fact did, vex, harass, injure, annoy, and oppress

ppcd

plaintiff...." All the acts done by the defendants were done in furtherance of the conspiracy.

A conspiracy is "'...a combination of two or more persons to accomplish an evil or unlawful purpose.'" (117 Sales Corp. v. Olsen (1978) 80 Cal.App.3d 645, 649.) In order to state a cause of action for civil conspiracy, plaintiff must allege "facts... which show the formation and operation of a conspiracy, the wrongful act of any of the conspirators thereto and damage resulting therefrom." (Ibid., emphasis in the original; accord Rosenfeld, Meyer & Susman v. Cohen (1983) 146 Cal.App.3d 200, 224.) Legal conclusions are insufficient. (117 Sales Corp., supra, at p.650.) The facts alleged must either show the formation of the conspiracy or support an inference of conspiracy based on "'the nature of the acts done, the relations of the parties, the interests of the alleged conspirators, and other circumstances.'" (Id. at p.649.)

A conspiracy itself is not a civil wrong. (117 Sales Corp. v. Olsen, supra, 80 Cal.App.3d at p.649.) It does not give rise to a cause of action unless the conspiracy is to commit a civil wrong. (Ibid.) Here, it appears plaintiff is attempting to allege a conspiracy to falsely arrest and

imprison him, as demonstrated by defendant's conferring with the police, then placing plaintiff under citizen's arrest, then providing police with information which they used to place plaintiff under arrest and later prosecute him. The only problem is, as previously discussed, plaintiff has not alleged a false arrest and imprisonment. Absent allegations of an underlying civil wrong, plaintiff has failed to state a cause of action for conspiracy. (Id. at pp 649-650.)

An examination of the first amended complaint shows, criminal complaint aside, plaintiff has failed to state a cause of action or prove any damages against defendant. This being the case, the trial court properly entered a judgment

against plaintiff, even though defendant was in default. (Taliaferro v. Taliaferro, supra 171 Cal.App.2d at pp 8-9; 6 Witkin Cal. Procedure, supra, Proceedings Without Trial, §249, p.548; see also Barragan v. Banco BCH, supra, 188 Cal.App.3d at p.302.)

IV

Finally, plaintiff contends a default judgment involving damages should not be made prior to trial on the merits as to the answering co-conspirators in this action. In view of the conclusion reached above, that judgment properly was entered in favor of defendant and against plaintiff, this contention need not be addressed.

----------19----------

The judgment is affirmed.

NOT TO BE PUBLISHED

SPENCER, P.J.

We concur:

DEVICH, J.

ORTEGA, J.

----------20----------

ORDERS OF THE TRIAL COURT BEING APPEALED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPT NW"A"

Date: August 1, 1990
HONORABLE RICHARD G. KOLOSTIAN JUDGE — L. KLEIN Deputy Clerk
R. BENNING, Deputy Sheriff — M. WEBB Reporter

NWC030307
BRANSON, RONALD L.
vs
CITY OF LOS ANGELES ETC

Counsel for Plaintiff
RONALD L. BRANSON
Counsel for Defendant:
JAMES K. HAHN
MORRIS, POLICH, PURDY

COMPLAINT FILED 07/02/1987

NATURE OF PROCEEDINGS: MOTION* TYPE OF ACTION AO

[X] FURTHER ORDER OF COURT AS FOLLOWS:
*PLTFS. MOTION TO VACATE JUDGMENT AND ENTER A DIFFERENT JUDGMENT AND ISSUE A STATEMENT OF DECISION IS DENIED.
FIVE YEAR STATUTE: 07/02/1992

MINUTES ENTERED
08/01/1990
DEPT NW"A" COUNTY CLERK

* * *

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

RONALD L. BRANSON
Plaintiff
vs.
CITY OF LOS ANGELES et al.
Defendant(s)

CASE NUMBER NWC 30307

JUDGMENT BY COURT AFTER DEFAULT

F I L E D
JUN 25 1990
FRANK S. ZOLIN
COUNTY CLERK
BY F. GOLDENHAR
DEPUTY

This cause came on to be heard before the Honorable RICHARD G. KOLOSTIAN presiding in Department NWA, on JUNE 7, 1990, appearing as attorney for plaintiff(s), and it appearing that defendant(s) CRAIG STRAUCH having been regularly served with process, having failed to appear and answer the plaintiff's amended complaint filed on Mar. 23, 1990, and the default of said defendant(s) having been duly entered and evidence having been introduced in open session of this Court or having been considered by the Court:

It is therefore ordered, adjudged, and decreed that plaintiff(s) recover from said defendant(s) the principal sum of $ 0, interest on said sum to the date hereof in the sum of $ 0, and attorney's fees in the sumof $ 0, total of $ 0, with plaintiff's(s) costs and disbursements amounting to the sum of $ (waived), together with interest on said judgment as provided by law. The Clerk is ordered to enter the judgment.

Dated: JUNE 25, 1990

RGK
Judge RICHARD G. KOLOSTIAN

110 76J738- R/10-85
RC040 JUDGMENT BY COURT AFTER DEFAULT

* * *

SUPERIOR COURT OF CALIFORNIA DEPT NWA
COUNTY OF LOS ANGELES
JUNE 25, 1990
HONORABLE RICHARD G. KOLOSTIAN JUDGE K. KENNEDY Deputy Clerk
NONE Deputy Sheriff NONE Reporter
Court Attendant

NWC 30307
BRANSON, RONALD L. Counsel for Plaintiff

vs
CITY OF LOS ANGELES, ETC Counsel for Defendant

NATURE OF PROCEEDINGS RULING ON SUBMITTED MATTER

In this cause, heretofore submitted on June 7, 1990, the Court makes the following ruling:

Judgment is granted for defendant, Craig Strauch and against plaintiff, Ronald L. Branson in the sum of 0.

Court finds the plaintiff failed to meet his burden of proof.

Judgment is signed and filed.

A copy of this minute order is sent via U.S. mail addressed as follows:

RONALD L. BRANSON
8643 KESTER AVE.
PANORAMA CITY, CA 91402

MINUTES ENTERED
6-25-90
DEPT NWA COUNTY CLERK

* * *

ORDER DENYING REHEARING

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 1 DATE: 06/30/92

Ronald L. Branson
10631 Lindley Avenue
Apt. #223
Northridge, CA 91326

RE: Branson, Ronald L.
vs.
Strauch, Craig J.
2 Civil B053785
Los Angeles NO. NWC30307

THE COURT:
Petition for rehearing denied.

* * *

ORDER DENYING REVIEW

Second Appellate District, Division One,
No. B053785

SO27625

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA
IN BANK

RONALD L. BRANSON, Appellant

v.

CRAIG J. STRAUCH, Respondent

SUPREME COURT
F I L E D
AUG 19 1992
Robert Wandruff
Clerk

Deputy

Appellant's petition for review DENIED.

LUCAS
Chief Justice

* * *

NOTICE OF APPEAL

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

Plaintiff/Appellant
In Propria Persona

F I L E D
SEP 21 1990
FRANK S. ZOLIN
County Clerk
By_____
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RONALD L. BRANSON, Plaintiff/Appellant, vs. CRAIG J. STRAUCH, Defendant/Respondent.	No. NWC 30307 NOTICE OF APPEAL (Re Default Judgment) C.R.C. Rule 1

PLEASE TAKE NOTICE that plaintiff and appellant, RONALD L. BRANSON, appearing in propria persona, appeals to the Court of Appeal of the State of California, Second Appellate District, from the court action taken on August 1, 1990, by Superior Court Judge Richard G. Kolostian in department NW"A" of the above-entitled court by his order made and entered August 1, 1990 denying plaintiff's motion to vacate judgment and enter a different judgment and issue a statement of decision pertaining to the Judgment By Court After Default filed June 25, 1990, regarding defendant CRAIG J. STRAUCH.

Dated: September 21, 1990

/s/ RONALD L. BRANSON
RONALD L. BRANSON
Plaintiff/Appellant

* * *

RONALD L. BRANSON
8643 KESTER AVE.
PANORAMA CITY, CA 91402
(No phone)
Plaintiff in Propria Persona

F I L E D
MAR 23 1990
FRANK S. ZOLIN
County Clerk
By _____
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RONALD L. BRANSON, Plaintiff, v. CITY OF LOS ANGELES; OFFICER ANTHONY R. STAVROPOULOS #23094; OFFICER PATRICK SHANNON #22789; SGT. ROGER W. FERGUSON # 13513; SGT. JOSEPH MORGAN #10888; DET. LARRY R. DOLLEY #16675; DET. THOMAS A. YOST #11694 (as DOE I); LT. LEE LORENZE #10328 (as DOE II); CRAIG J. STRAUCH, an individual; COMMR. PATRICIA G. SCHWARTZ; DOES III through XX, inclusive, Defendants.

) No. NWC 30307
) FIRST AMENDED
) COMPLAINT FOR
) DAMAGES FOR
) TORT
) LIABILITY;
) DEMAND FOR
) JURY TRIAL;
) JUDICIAL
) NOTICE
) [CCP §472;
) CC §§3294, 3333;
) GC §§815.2, 815.6]

JUDICIAL NOTICE

PLEASE TAKE JUDICIAL NOTICE that plaintiff has been actively and vigorously pursuing a federal action based on the same facts and circumstances as this state tort action. The federal action was filed on May 8, 1987, in the United States District Court, Los Angeles, California, and assigned Case Number CV 87-03003-WDK(S). PLEASE ALSO TAKE JUDICIAL NOTICE that as a result of discovery in the above federal action, plaintiff hereby amends this complaint pursuant to Section 472 of the California Code of Civil Procedure, adding the names of DET. THOMAS A. YOST as DOE I and the name of LT. LEE LORENZE as DOE II; clarifying the names of

OFFICER ARTHUR R. STAVROPOULOS to now read OFFICER ANTHONY R. STAVROPOULOS, SGT. FERGUSON to now read SGT. ROGER W. FERGUSON, SGT. MORGAN to now read SGT. JOSEPH MORGAN, and DET. DOLLEY to now read DET. LARRY R. DOLLEY; enhancing the Second Cause of Action of Conspiracy, and deleting altogether the Fifth Cause of Action entitled "Theft/Unlawful Seizure of Personal Property", and the Tenth Cause of Action entitled "Failure to Give Notice to Plaintiff".

* * *

FIRST AMENDED COMPLAINT

Plaintiff alleges:

FIRST CAUSE OF ACTION
(Vicarious Liability)

1. Plaintiff is, and at all times herein mentioned has been, a resident of the State of California, County of Los Angeles, and a natural born citizen of the United States of America, being endowed with certain unalienable rights, ex gratia, protected by the United States and California Constitutions, having been granted certain other rights, ex debito justitiae, by said United States Constitution and California Constitution and laws in pursuance thereof. Plaintiff does now, as he has at all times herein mentioned, demand all of his rights at all times and waives none of his rights at any time.

2. Defendant CITY OF LOS ANGELES is, and at all times herein mentioned was, a municipal corporation duly organized and existing by virtue of its Charter, Code, Ordinances, Rules and Regulations, authorized by the California Constitution and under the laws of the State of California and County of Los Angeles; and in whose name the individual police-officer defendants, and each of them, performed all acts and omissions herein alleged, under the purported authority of its statutes, ordinances, rules, regulations, policies, customs and usages. At all times herein mentioned, defendant CITY OF LOS ANGELES has possessed the power and authority to enact legislation, adopt policies and prescribe

rules, regulations, and practices affecting the operation of its police department, and particularly said department's employment and disciplinary practices, customs and usages.

3 . Defendants ANTHONY R. STAVROPOULOS, PATRICK SHANNON, SGT. ROGER W. FERGUSON, SGT. JOSEPH MORGAN, DET. LARRY R. DOLLEY, DET. THOMAS A. YOST, and LT. LEE LORENZE were at all times herein mentioned, duly appointed, qualified, and acting police officers, employed as such by defendant CITY OF LOS ANGELES, and at all times herein mentioned were acting within the course and scope of such employment. 4. Defendant CRAIG J. STRAUCH was, at all times herein mentioned, an individual working in close conjunction, cooperation and conspiracy with defendant police officers herein, by and through whose authority he performed all acts and omissions alleged herein. At no time herein mentioned was plaintiff aware that defendant STRAUCH was an off-duty officer of the California Highway Patrol, or any other law enforcement officer, under the circumstances of this case, as hereinafter alleged.

5. Defendant PATRICIA G. SCHWARTZ was, at all times herein mentioned, a duly appointed, qualified, and acting Commissioner of the Los Angeles Municipal Court, working under the direction of the judges of said Court as an ex officio deputy clerk thereof, authorized to perform only subordinate judicial duties, and who was not, at any time herein mentioned, a magistrate within the meaning of California Penal Code Sections 807 and 808, nor did she, at any time herein mentioned, have jurisdiction to act in any manner whatsoever in plaintiff's criminal case, except to dismiss.

6. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES III through XX, inclusive, the names of DOE I and DOE II having been ascertained since the filing of the original complaint herein, and therefore sues said defendants by such fictitious names; plaintiff will ask leave of court to amend this first

amended complaint to allege their true names and capacities when the same have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that plaintiff's injuries and damages, as hereinafter alleged, were proximately caused by their negligence and conduct.

7. Defendants, and each of them are jointly and severally liable for the damages caused by virtue of their acts and omissions herein alleged, and such liability is binding upon themselves, their heirs, executors, successors, and assigns.

8. On or about the 11th day of August, 1986, plaintiff duly presented a claim to defendant CITY OF LOS ANGELES in the amount of $100.000 per count per person determined liable, a copy of which claim is attached hereto as "EXHIBIT A" and incorporated herein by reference and made a part hereof. Said claim was rejected on or about the 5th day of January, 1987, a copy of which rejection is attached hereto as "EXHIBIT B", incorporated herein by such reference, and made a part hereof.

9. Plaintiff places this court, and all state courts, on notice that pursuant to the case of Windsor, 353 U.S. 364, he reserves his right to have any and all federal questions, if any, ultimately decided by a federal factfinding process, as discussed by the United States Supreme Court in England v. Medical Exmrs. (1964) 375 U.S. 411, and recognized by the Ninth Circuit Court of Appeals in Morrison v. Jones, 607 F.2nd 1269 see also Board of Regents v. Tomanio (1980) 446 U.S. 478, 497 n.6 which states that the placing of state courts on such notice bars a preclusive effect on state decisions of federal claims.

10. At all times herein mentioned, the employee/agent defendants, and each of them, of defendant CITY OF LOS ANGELES, tortiously inflicted the injuries and damages under the

circumstances hereinafter described and alleged, within the course and scope of their employment and agency of defendant CITY OF LOS ANGELES; accordingly, defendant CITY is vicariously liable for all general and miscellaneous damages (other than punitive or exemplary) pursuant to Government Code Section 815.2.

SECOND CAUSE OF ACTION

(Conspiracy to Tortiously Inflict Injuries Upon Plaintiff and to Deprive Plaintiff of his State Constitutional Rights)

11. Plaintiff realleges each and every allegation contained in Paragraphs 1 through 10 of this first amended complaint and incorporates the same herein by reference as if fully set forth hereat.

12. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, each of the individual defendants was acting as the agent, employee, and representative of each of the remaining defendants, and in doing the things herein alleged, was acting within the course and scope of such agency and employment.

13. The acts, omissions and events herein described occurred on and between the dates of May 11, 1986, and May 16, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, commencing shortly after midnight on the morning of May 11, 1986, at and near the intersection of Strathern and Capistrano Avenue in Canoga Park until approximately 12:45 a.m., continuing at and near the West Valley Police Station of the Los Angeles Police Department in Reseda until approximately 7:00 a.m. on May 14, 1986, continuing at and near the Los Angeles City Attorney's Office in Van Nuys and the Los Angeles Municipal Court filing window in Van Nuys sometime during the day of May 14, 1986, continuing the same day (May 14th) at and near the Van Nuys Courthouse holding cell facility until approximately 5:00 p.m., then continuing the evening of May 14th at and near the Los Angeles County Central Jail in downtown Los Angeles until

approximately 6:00 a.m. on May 16, 1986, then back to the Van Nuys Courthouse holding cell facility and the so-called "arraignment" court until approximately 5:00 p.m., and then back once again to the Los Angeles County Central Jail in downtown Los Angeles until approximately 8:30 p.m. on May 16, 1986.

14. On or about the aforementioned times, dates, and places, within the City of Los Angeles, County of Los Angeles, State of California, defendants, and each of them, whether named or as yet not named herein, acting pursuant to a policy, rule, custom, practice, and usage, knowingly and deliberately promulgated, adopted and applied by each defendant in bad faith against plaintiff, after plaintiff had asserted his constitutional rights, knowingly, deliberately, and willfully conspired and agreed among themselves and others to, and in fact did, vex, harass, injure, annoy, and oppress plaintiff, and tortiously inflict injuries upon plaintiff, depriving him of his rights to life, liberty, dignity, happiness, safety, privacy, and property, secured to him by the Constitution of the State of California, by California statute, and by laws made in pursuance thereof, proximately causing irreparable harm and injury, both great and immediate, as hereinafter alleged.

15. That pursuant to and in furtherance of the aforesaid agreement and conspiracy, the defendants, and each of them, by cooperation, aid, encouragement, and ratification of the acts of each of the remaining defendants, and each of them, knowingly and intentionally engaged in the following acts and omissions while acting within the course and scope of their employment and agency.

(a) On or about the 11th day of May, 1986, shortly after midnight, at and near the intersection of Strathern and Capistrano Avenue in Canoga Park, California, defendant STRAUCH accosted plaintiff and two of his friends, in an uncontrollable, erratic, and frenzied manner, yelling "Police! Police! Identify yourselves!" and

accusing plaintiff and his friends of attempting to burglarize his car, a 1967 or '68 Plymouth which plaintiff observed to be (1) totally wrecked on the passenger side; (2) unmoved for approximately two to three months to plaintiff's knowledge; (3) sitting abandoned upon a public street with two-year outdated registration tabs (1984), alongside a public schoolyard not associated with any private residence or building.

(b) At said time and place, defendant STRAUCH knew of the undriven, unregistered, wrecked and abandoned condition of said vehicle, left in such condition upon a public street alongside a public schoolyard, as aforesaid, but nevertheless failed to remove, or have removed, said vehicle or to cite it, or have it cited, with a 72-hour parking violation notice, as was his duty to do; but instead, said defendant STRAUCH permitted said vehicle to remain in such condition on the public street as an attractive nuisance and decoy to draw, lure and entrap unwary and unsuspecting passersby whose curiosity might be raised by such condition and whose actions as a proximate result thereof would cause the conduct herein described, of which plaintiff fell victim.

(c) At said time and place, defendant STRAUCH was not interested in plaintiff's apology or explanation which plaintiff attempted to give him as the reason he and his friends were examining said vehicle, but instead defendant STRAUCH unlawfully detained plaintiff without a warrant or other process, grabbed property from plaintiff's person without a warrant and without plaintiff's permission to do so, and held it for defendants STAVROPOULOS and SHANNON, officers of the Los Angeles Police Department of defendant CITY OF LOS ANGELES, who arrived at the scene shortly thereafter as a proximate result of defendant STRAUCH's telephone calls to the police.

(d) Prior to the arrival of the police at the scene, while defendant STRAUCH accosted plaintiff and the others, STRAUCH was shining a bright light in plaintiff's face, causing a temporary

blindness to plaintiff so that he could not readily and plainly observe what was going on in his presence, and upon defendant STRAUCH running back to his house a second time, apparently to again call the police, plaintiff advised his friends to leave the scene due to the strange, uncontrollable and unpredictable behavior being exhibited by defendant STRAUCH, fearing that it might lead to a more serious, dangerous, and even life-threatening situation; plaintiff advised that he would remain at the scene until the police arrived, plaintiff sincerely believing at the time that the police would be more reasonable.

(e) At approximately 12:20 a.m. on said date of May 11, 1986, at said location of Strathern and Capistrano Avenue in Canoga Park, California, defendants STAVROPOULOS and SHANNON arrived at the scene in a marked police vehicle.

(f) Immediately after exiting the driver's side of the police vehicle, defendant STAVROPOULOS asked defendant STRAUCH "Is this the suspect?" (referring to plaintiff), to which defendant STRAUCH responded "Yes", and without any further questioning whatsoever, defendant STAVROPOULOS conducted a pat-down search, telling plaintiff to first place his hands on his head, and then place them behind his back, whereupon plaintiff was immediately handcuffed. Plaintiff was not armed, was not under the influence of any liquor, drug or narcotic, at no time was violent, did not pose a threat to anyone, and made no attempt to escape.

(g) While plaintiff stood by the police vehicle in handcuffs, defendants STRAUCH and SHANNON walked over to the vehicle in question and examined it. Upon returning to the police vehicle, defendant STAVROPOULOS asked defendant STRAUCH if he saw any evidence of tampering (using the word "tampering") to which STRAUCH replied "No I don't".

(h) While defendants STRAUCH and SHANNON were looking at the vehicle in question, plaintiff explained his actions and reason for being there

to defendant STAVROPOULOS. When plaintiff told STAVROPOULOS that the registration was two years outdated, defendant STAVROPOULOS shined his flashlight on the license tabs which were 1984 tabs.

(i) After defendant STAVROPOULOS affirmatively observed the outdated license tabs and after defendant SHANNON visually examined the vehicle in question with defendant STRAUCH, none of said defendants made any effort to cite the vehicle for any violation whatsoever.

(j) Defendants STAVROPOULOS, SHANNON and STRAUCH then proceeded to huddle in a private discussion approximately 30 feet away from plaintiff, so he could not overhear them.

(k) After the private discussion, the above three defendants returned to the police vehicle, and without any announcement to plaintiff, defendant STRAUCH filled out and affixed his name to an L.A.P.D. supplied Private Person's Arrest Report form without submitting any oath or affirmation as required by law, without a warrant or other process, and without any other lawful means to satisfy State constitutional and statutory mandates.

(l) Upon observing this activity, plaintiff asked "What's going on?", to which defendant STAVROPOULOS replied "We're placing you under arrest" without stating the charges or reading any rights to plaintiff. Plaintiff then asked "What's the probable cause?" to which defendant SHANNON approached plaintiff, shaking a gloved, clenched fist in plaintiff's face while he stood defenseless in handcuffs, causing plaintiff to flinch back in fear to avoid being struck, said defendant SHANNON stating in a rude and threatening manner "Look man, you can take your probable cause and shove it."

(m) At some point thereafter, while still at the scene, defendants STAVROPOULOS and SHANNON converted the unannounced citizen's arrest by defendant STRAUCH into a Los Angeles Police Department warrantless felony arrest by said

police officer defendants based solely on the subjective, uncorroborated, hearsay statements as given to them by defendant STRAUCH, never having received an oath or affirmation from defendant STRAUCH, while deliberately and intentionally ignoring plaintiff's explanation; such felony arrest being created by said defendants only as a pretext to draw plaintiff into full felony booking procedures for the purpose of L.A.P.D. harassment and intimidation, neither defendant STRAUCH nor any officer of the Los Angeles Police Department ever intending to take plaintiff to a magistrate for a probable cause examination of said warrantless felony arrest as required by Penal Code Sections 849(a) and 825, as well as by State constitutional mandates, nor was plaintiff ever so taken at any time, demonstrating a deliberate indifference to plaintiff's constitutional, statutory, and personal rights.

(n) As evidenced by the police report, a copy of which is attached hereto as "EXHIBIT C" and made a part hereof, defendant STRAUCH signed a "preliminary investigation" report and gave the police certain information of a character that stimulated the warrantless felony arrest of plaintiff by defendants STAVROPOULOS and SHANNON and approved later that morning by defendant SGT. FERGUSON. Although such information was known to defendants STRAUCH, STAVROPOULOS and SHANNON, the report (EXHIBIT C) fails to mention (1) plaintiff's explanation for his conduct; (2) the undriven, unregistered, abandoned and wrecked condition of the subject vehicle; and (3) the fact that said vehicle was illegally parked on a public street.

(o) At approximately 12:45 to 1:00 a.m. on said date of May 11, 1986, while being transported from the scene to West Valley Police Station by defendants STAVROPOULOS and SHANNON, plaintiff demanded to be taken to a magistrate forthwith, to which defendant SHANNON responded "We're taking you to jail"; and upon plaintiff's further insistence on an immediate appearance before a magistrate,

defendant SHANNON stated "We can hold you for 72 hours, not counting weekends."

(p) Upon arrival at the West Valley Police Station in Reseda, California, at approximately 1:00 a.m., on May 11, 1986, as a proximate result of the warrantless felony arrest for which there was never, at any time, a judicial determination of probable cause, defendant STAVROPOULOS conducted a full post-arrest stationhouse custodial search of plaintiff's person and effects, relying upon the fact of plaintiff's warrantless felony arrest as authority to do so, said search including an intensive search of plaintiff's wallet and personal papers therein; and upon plaintiff's vigorous objection to this illegal search, defendant STAVROPOULOS stated "Go ahead and object--we can search for weapons and contraband." At no time did plaintiff pose a danger or threat to the safety and well-being of anyone present.

(q) Upon completing the above search of plaintiff's person, defendants STAVROPOULOS and SHANNON physically lifted plaintiff by his armpits, defendant STAVROPOULOS on the right and defendant SHANNON on the left, and dragged plaintiff against his will and over his objection approximately twenty-five (25) feet from the booking cage to the strip-search cell, whereupon, with the approval and acquiescence of other police officers and personnel present, as a further proximate result of the warrantless felony arrest of plaintiff for which there was never a judicial determination of probable cause, defendant STAVROPOULOS ordered plaintiff to undress, to which plaintiff vigorously objected based on his constitutional and personal rights to privacy, decency and dignity.

(r) Upon plaintiff's objection and refusal to voluntarily undress, claiming his rights, as aforesaid, defendant SGT. JOSEPH MORGAN, in the presence of defendants STAVROPOULOS and SHANNON, and others, forcibly assaulted and battered plaintiff by firing two cartridges simultaneously from a taser gun which immediately

ejected four barbed darts charged with electricity, penetrating plaintiff's body and torso in the chest, side, abdomen, and groin areas, defendant MORGAN relying explicitly upon the mere fact of the warrantless felony arrest of plaintiff conducted by his colleagues as his justification for compelling the unwarranted strip search of plaintiff; said taser instrument being aggressively and oppressively used by defendant MORGAN to forcibly subject plaintiff to the humiliation and indignities of a visual cavity strip search of his nude body without having been afforded the protection of his constitutional, statutory, and personal rights; said defendant MORGAN thereby committing acts of torture upon plaintiff to coerce him into submitting to their demands, as aforesaid, by intentionally inflicting extremely shocking and paralyzing physical pain and suffering to his body and nervous system, leading plaintiff to believe that defendant MORGAN was intending to torture him to death, causing severe emotional distress and trauma, continuing to the time of filing this first amended complaint,all as a proximate result of the warrantless felony arrest for which there was never a judicial determination of probable cause.

(s) After defendant SGT. MORGAN administered three separate rounds of electrical torture to plaintiff's body, plaintiff at all times demanding his constitutional rights to be left alone absent a warrant showing probable cause, defendant MORGAN motioned to defendant STAVROPOULOS to commence the strip search of plaintiff, whereupon defendant STAVROPOULOS and another officer whose identity is presently unknown to plaintiff, with the approval and acquiescence of others present, physically forced plaintiff to the floor while he was still injected with the taser darts and wires, and proceeded to forcibly remove plaintiff's clothing from his body, over and above his continued objections, while defendant SHANNON stood over plaintiff pointing a second taser gun at plaintiff in a threatening and menacing manner. At no time did plaintiff pose a danger or threat to

the safety and well-being of those present.

(t) Defendants were unable to remove plaintiff's shirt due to the existing taser darts still penetrating his body; plaintiff was then rolled onto his side and his rectal cavity observed, after which the taser wires were cut, plaintiff's removed clothing tossed at him, and he was told to get dressed, all of such conduct causing plaintiff great embarrassment, humiliation, intimidation, degradation, and gross indignities of a dehumanizing nature exceeding all bounds of that which any human being should have to tolerate in a civilized society.

(u) At approximately 1:30 a.m. May 11, 1986, defendants STAVROPOULOS and SHANNON transported plaintiff to Humana Hospital West Hills Emergency where plaintiff was subjected to a very painful operation of dart removal of three barbed taser darts that remained penetrated in the flesh of his body as a proximate result of the taser intrusion by defendant MORGAN, as aforesaid.

(v) At approximately 2:00 a.m. May 11, 1986, defendants STAVROPOULOS and SHANNON transported plaintiff back to West Valley Police Station where defendant SGT. MORGAN authorized the booking of plaintiff for a felony, as a proximate result of the warrantless felony arrest for which there was never a judicial determination of probable cause.

(w) At some time thereafter, on May 11, 1986, at the West Valley Police Station of the Los Angeles Police Department of defendant CITY OF LOS ANGELES, defendant SHANNON, listed as the "reporting officer", caused to be prepared and presented for approval the L.A.P.D. warrantless felony arrest and crime reports (EXHIBIT C attached), reporting only the subjective, uncorroborated, hearsay statements, without any oath or affirmation thereto, as given to the arresting officers by defendant STRAUCH, as aforesaid, while maliciously, deliberately and deceitfully omitting from the report any information whatsoever reflecting plaintiff's

explanation for his conduct and other circumstances existing at the time of his arrest, omitting as well any information reflecting the unregistered and deteriorated condition of the vehicle in question (the Plymouth) which had been left parked on a public street unmoved for several months, said police reports in such biased reporting format being presented for approval to defendant SGT. ROGER W. FERGUSON, who, being unconcerned about whether or not plaintiff may have had anything to say about the matter that may have refuted and conflicted materially with the information upon which the police were solely relying, unquestioningly and routinely signed his approval to the reports in the biased form in which they were reported and presented by defendant SHANNON.

(x) As a further proximate result of the warrantless felony arrest of plaintiff for which there was at no time a determination of probable cause, at some time following said felony arrest of plaintiff, in the vicinity of Canoga Park, California, defendant STRAUCH, acting as an employee, agent, and representative of the Los Angeles Police Department of defendant CITY OF LOS ANGELES, in the functional capacity of an L.A.P.D. investigator following plaintiff's arrest, accessed and made available as an exhibit which was used against plaintiff at trial a computer printout of his Department of Motor Vehicles record.

(y) As a further proximate result of the warrantless felony arrest of plaintiff for which there was at no time a judicial determination of probable cause, at some time during the day of May 12, 1986, at West Valley Police Station, defendant DET. DOLLEY used plaintiff's statutory and constitutional right to be brought before a magistrate as a bribe to plaintiff stating "If you give us your fingerprints, we'll let you see a judge", neither defendant DOLLEY nor any other police officer having any intention of ever bringing plaintiff before a magistrate at any time following his warrantless felony arrest.

(z) At some time during the evening of May 12, 1986, at West Valley Police Station, a uniformed police officer apparently of high command wearing silver bars, who was perhaps the rank of a captain, whose identity was then and is presently unknown to plaintiff, approached plaintiff in his jail cell with threatening and intimidating remarks by telling plaintiff that he was going to send a crew down in the morning intending to extract further property from plaintiff, to wit, his fingerprints, without a warrant, without a court order, and without probable or reasonable cause, by the further use of force, to wit, the breaking of plaintiff's fingers, the additional use of a taser gun, or knocking plaintiff unconscious, unless plaintiff voluntarily submitted to their demands, such threatening remarks causing plaintiff to become terrorized and fear for his life, all as a proximate result of the warrantless felony arrest of plaintiff, as aforesaid, for which there was never a judicial determination of probable cause.

(aa) At approximately 6:00 a.m. the next morning, May 13, 1986, at West Valley Police Station, in carrying out the aforedescribed threats, a crew of approximately four uniformed police officers, whose identities were then and are presently unknown to plaintiff, armed with taser guns and night sticks, came to plaintiff's cell accompanied by defendant THOMAS A. YOST and defendant LARRY R. DOLLEY who introduced defendant YOST to plaintiff as the "commanding officer", defendant YOST stating to plaintiff that despite plaintiff's constitutional demands, they were mandated by police procedure to obtain plaintiff's fingerprints and that they intended to get them one way or another, subjecting plaintiff to further threats of being knocked unconscious by the police, if necessary, to achieve their objective; plaintiff, in reliance on the representation by defendant DOLLEY and acquiescence by defendant YOST that said defendant YOST was the "commanding officer" making such a serious threat to plaintiff's life and

limb, with the accompanying crew of armed officers apparently able to carry out the above threats, together with the similar threats having been made the previous evening by a high-ranking officer, was thereby further terrorized and put in fear for his life, all as a proximate result of the warrantless felony arrest of plaintiff, for which there was never a judicial determination of probable cause.

(bb) During the above confrontation, immediately above described, when plaintiff refused to submit to defendants' demands for fingerprints, insisting on his constitutional right to be left alone absent a warrant, a court order, or a judicial determination of probable cause for the arrest for which he was there in the first place, defendant YOST stated that in order to avoid any "trouble", he was willing to state on the fingerprint card, and sign such statement, that they were taking plaintiff's fingerprints over and above his objection, without a warrant, without a court order, such arrangement being confirmed by defendant DOLLEY who stated to plaintiff "You have the commanding officer's word on it." In reliance upon the representation that defendant YOST would sign such a statement on the fingerprint card as the "commanding officer", plaintiff accepted the arrangement and signed such a statement following the signature of defendant THOMAS A. YOST, who signed the statement on the card (a copy of which is attached hereto as "EXHIBIT D" and incorporated herein by reference) in the presence of plaintiff, defendant DOLLEY, and a number of other officers whose identities were then and are presently un-known to plaintiff, and plaintiff's fingerprints were thus taken under coercion and duress, all as a proximate result of plaintiff's warrantless felony arrest for which there was never a judicial determination of probable cause.

(cc) At approximately 7:00 a.m. on May 14, 1986, after holding plaintiff in police custody fifteen (15) hours beyond plaintiff's imperative

release time which had already expired the day before, at 4:00 p.m. May 13, 1986, L.A.P.D. transferred custody of plaintiff to the Los Angeles County Sheriff's Department in whose custody plaintiff remained for three additional days, all as a proximate result of plaintiff's warrantless felony arrest for which there was never, at any time, a judicial determination of probable cause.

(dd) On or about May 14, 1986, at the West Valley Police Station, Detectives Division, of the Los Angeles Police Department of defendant CITY OF LOS ANGELES, after plaintiff's imperative release time had already expired at 4:00 p.m. the previous afternoon, defendant LARRY R. DOLLEY, together with defendant LT. LEE LORENZE, his supervisor, with no intention on the part of either said defendant of ever taking plaintiff before a magistrate for a judicial determination of probable cause for his warrantless felony arrest, and with no intention of acting whatsoever on the subject matter of plaintiff's warrantless felony arrest beyond the booking stage, unilaterally decided to drop the felony altogether from consideration and transmute plaintiff's warrantless felony arrest into a full-blown criminal prosecution on misdemeanor charges, whereby plaintiff would be unlawfully subjected to stand trial, by usurping the power and authority of the District Attorney to make the initial crime-charging decision, practicing law not being licensed to do so by making the prosecutorial decision themselves to summarily drop the felony offense for which plaintiff was arrested without a warrant or other process and prosecute plaintiff on misdemeanor charges, neither defendant DOLLEY nor defendant LORENZE having any intention of bringing plaintiff's case to the District Attorney's Office for evaluation of the felony arrest and the subsequent prosecutorial decisions.

(ee) On or about May 14, 1986, at Van Nuys, California, defendants DOLLEY and LORENZE, police officers of defendant CITY OF LOS ANGELES, having falsely converted the subject matter of

plaintiff's case from his warrantless felony arrest into bogus misdemeanor charges after plaintiff's imperative release time had already expired at 4:00 p.m. the previous afternoon and he should no longer have been in custody, by the persuasion and influence of their office and position as police detectives for defendant CITY OF LOS ANGELES, caused to be issued by the City Attorney's Office of defendant CITY OF LOS ANGELES, without legal authority or jurisdiction to do so, a bogus misdemeanor complaint, i.e., an accusatory pleading, against plaintiff based upon the hearsay representations by defendants STAVROPOULOS and SHANNON of defendant CITY OF LOS ANGELES of the subjective, uncorroborated statements as given to them by defendant CRAIG J. STRAUCH, absent any oath or affirmation thereto, as aforesaid, which was biasedly reported in plaintiff's felony arrest report by defendant SHANNON, as aforesaid, and upon the unilateral and unlawful decision of the Los Angeles Police Department of defendant CITY OF LOS ANGELES by its officers, defendants DOLLEY and LORENZE, to proceed with a misdemeanor prosecution of plaintiff, eliminating altogether any and all judicial process on plaintiff's warrantless felony arrest as required by law, thereby subjecting plaintiff to an unwarranted, unlawful, and unconstitutional prosecution.

(ff) On May 14, 1986, at Van Nuys, California, the filing prosecutor of the City Attorney's Office of defendant CITY OF LOS ANGELES, at the instance and request of defendant DET. DOLLEY, without jurisdiction or lawful authority to do so, prepared the misdemeanor complaint based solely on police representations of information given to them by defendant STRAUCH shown by the police report (EXHIBIT C), which contained no information about plaintiff's explanation nor about the condition and status of the subject vehicle, providing no basis upon which a reviewing officer, a reviewing prosecutor, or a reviewing magistrate could have determined reasonable cause for

plaintiff's felony arrest based on objective factors as required by law, and was done without there being any evaluation whatsoever by the District Attorney of the felony arrest for the initial crime-charging decision.

(gg) On May 14, 1986, at Van Nuys, California, with the cooperation, assistance, and acquiescence of the CITY prosecutor, defendant DOLLEY, without jurisdiction and lawful authority to do so, caused a criminal complaint to be issued against plaintiff reflecting the dropped charges from a felony (for which plaintiff was subjected to the imprisonment and harassment as aforedescribed) to misdemeanor charges at the complaint stage, thereby depriving plaintiff of mandatory safeguards and due process requirements, such as an initial review by the District Attorney of the felony, permission by the District Attorney for the CITY to proceed on anything other than the felony with plaintiff's approval, or a preliminary hearing on the felony and a trial by the People of the State of California, to which plaintiff would have been entitled as an accused felon.

(hh) On May 14, 1986, at Van Nuys, California, defendant DOLLEY then caused to be filed by the Police Department of defendant CITY OF LOS ANGELES said bogus misdemeanor complaint with the Municipal Court of the Los Angeles Judicial District, Van Nuys Branch, after plaintiff's imperative release time had already expired at 4:00 p.m. the previous afternoon, said defendants knowing and who reasonably should have known that the subject matter then pending in plaintiff's criminal matter was his warrantless felony arrest for which plaintiff had yet to be brought before a magistrate pursuant to State constitutional and statutory requirements, and which had yet to be presented to the District Attorney as the public prosecutor for the People of the State of California, in the absence of which processes there was no subject matter jurisdiction to file a misdemeanor complaint against plaintiff.

(il) On May 14, 1986, at Van Nuys, California, defendant PATRICIA G. SCHWARTZ, without jurisdiction to act whatsoever in plaintiff's criminal matter, falsely issued an "Order Remanding Defendant to Custody", a copy of which is attached hereto as "EXHIBIT E" and made a part hereof, plaintiff never having to that date appeared before defendant SCHWARTZ or any other judicial officer for any purpose, the record falsely indicating that plaintiff "could not be located", and plaintiff never having been out of custody at any time since his warrantless felony arrest to that date, such unauthorized action on the part of defendant SCHWARTZ contributing to the conspiracy to deprive plaintiff of his constitutional, statutory, and personal rights to be free from false imprisonment.

(jj) At approximately 6:00 p.m. on May 14, 1986, plaintiff was placed aboard a Sheriff's bus, in chains, without having been brought before a magistrate or any judicial officer at any time, and transported to the Los Angeles County Jail in downtown Los Angeles, as a further proximate result of the warrantless felony arrest of plaintiff for which there was never a determination of probable cause.

(kk) As a proximate result of plaintiff's warrantless felony arrest, plaintiff was held imprisoned for two more days at the downtown County Jail and subjected to further harassment, intimidation, and gross indignities, without having been brought before a magistrate or any judicial officer to determine the probable cause for said arrest or for any other purpose.

(ll) On the sixth day of plaintiff's false imprisonment at approximately 6:00 a.m. May 16, 1986, plaintiff was again placed aboard a Sheriff's bus, in chains, and transported to the Van Nuys Courthouse holding cell.

(mm) At some time later in the day of May 16, 1986, at Van Nuys, California, plaintiff was brought before defendant PATRICIA SCHWARTZ who, unbeknownst to plaintiff, was not a

magistrate by definition of Penal Code Section 807 and 808 nor had jurisdiction to act in any manner whatsoever in plaintiff's criminal matter except to dismiss the bogus complaint, there being no oath or affirmation, no probable cause, no review by the District Attorney, no verified complaint, no commitment by a magistrate, no judicial determination of probable cause, no notice to plaintiff that he had been arrested on a felony charge, no notice that his felony charge had been or was then being disposed of, and no due process of law whatsoever in plaintiff's case.

(nn) At the same time and place, defendant SCHWARTZ, masquerading as a judge before plaintiff, proceeded to conduct a false arraignment by judicial fiat, entering plaintiff's plea of "not guilty", denying plaintiff's request to be released O.R., and setting the matter for trial, all without subject-matter jurisdiction to act whatsoever in plaintiff's criminal matter, and all as a proximate result of the warrantless felony arrest of plaintiff six days earlier, for which there was never a judicial determination of probable cause.

(oo) At approximately 5:00 p.m. on May 16, 1986, plaintiff was again placed on board a Sheriff's bus, in chains, and transported back to the Los Angeles County Jail in downtown Los Angeles where his false imprisonment continued until approximately 8:30 p.m. that evening.

(pp) At approximately 8:30 p.m. on May 16, 1986, at Los Angeles, California, plaintiff was released as a result of bail that had been posted in his behalf approximately ten hours earlier, concluding six days of false imprisonment as a proximate result of the false felony arrest on May 11, 1986, for which there was never, at any time, a judicial or other determination of probable cause.

16. As a proximate result of the aforedescribed acts and omissions of defendants, and each of them, plaintiff suffered great embarrassment, humiliation, intimidation, fear, anxiety, anguish, degradation, gross indignities of

a dehumanizing nature exceeding all bounds of that which any human being should have to tolerate in a civilized society, depriving plaintiff of his personal life, liberty, dignity, happiness, safety, privacy, and property, without due process of law, in violation of Article I, Sections 1, 7, 13, 14 and 15 of the California Constitution, and in violation of California Penal Code Sections 849(a) and 825, all to plaintiff's general damages in the sum of $120,000.00.

17. The aforedescribed acts and omissions of defendants, and each of them, were done by each said defendant knowingly, intentionally, maliciously, and in bad faith for the purpose of vexing, annoying, harassing, injuring, and oppressing plaintiff, and intentionally inflicting emotional distress thereby, with a reckless indifference to, and callous disregard for, the consequences of their actions in violating plaintiff's right's; and by reason thereof, plaintiff is entitled to, and claims, exemplary and punitive damages against each individual defendant personally (and not the taxpayers) in the sum of $30,000.00.

THIRD CAUSE OF ACTION

(False Arrest/False Imprisonment)

18. Plaintiff realleges each and every allegation contained in Paragraphs 1 through 10, and 12 through 17, inclusive, of this first amended complaint, an incorporates the same herein by reference as if fully set forth hereat.

19. On or about the 11th day of May, 1986, at an in the City of Los Angeles, County of Los Angeles, State of California, defendant CRAIG J. STRAUCH, acting as an individual in conspiracy, conjunction, cooperation, and agency with officers of the Los Angeles Police Department, and others, did willfully, intentionally, maliciously, knowingly, and in bad faith, unlawfully detain plaintiff, grab property from plaintiff's person, and conduct a citizen's misdemeanor arrest of plaintiff without a warrant or other process, and then encouraged, directed, and assisted defendants ANTHONY R.

STAVROPOULOS and PATRICK SHANNON, Los Angeles police officers acting within the course and scope of their employment with defendant CITY OF LOS ANGELES, in procuring a false felony arrest of plaintiff, without warrant or process, with the intent to induce such false arrest and the subsequent imprisonment of plaintiff which extended six days, knowing to a substantial certainty that such arrest and imprisonment would result therefrom, all the while defendant STRAUCH taking an active role therein by willfully, knowingly, and intentionally giving defendants STAVROPOULOS and SHANNON information of a character that stimulated plaintiff's unlawful arrest, without the supporting oath or affirmation as required by Article I, Section 13 of the California Constitution, such conduct instigating, encouraging, and inviting the arrest and imprisonment that did follow, depriving plaintiff of his right to have his person secure from unreasonable seizure, search, unjustifiable force and bodily harm without due process of law in violation of Article I, Section 1, 7(a) and 13 of the California Constitution.

20. On or about the 11th day of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, defendants ANTHONY R. STAVROPOULOS and PATRICK SHANNON, while both were acting within the course and scope of their employment as police officers of defendant CITY OF LOS ANGELES, did willfully, knowingly, maliciously, and in bad faith, accept the information from defendant STRAUCH without the required oath or affirmation, all the time disregarding plaintiff's explanation whatsoever and facts regarding the condition and status of the automobile in question at the time of arrest, and proceeded nevertheless to place plaintiff under a felony arrest, without warrant or other process, based on such uncorroborated information for the purpose of conducting an expedition for evidence in the hope that something might turn up during post-arrest procedures, such conduct resulting in

plaintiff's subsequent false imprisonment, illegal search and seizures, assaults, battery, intentional infliction of pain, and other gross indignities and humiliations to plaintiff by defendants, and each of them, depriving plaintiff of his right to have his person secure from unreasonable seizure, search, unjustifiable force and bodily harm without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

21. On or about the 11th day of May, 1986, at and in the City of Los Angles, County of Los Angles, State of Caiifornia, defendant ANTHONY R. STAVROPOULOS and PATRICK SHANNON, while both were acting within the course and scope of their employment as police officers of defendant CITY OF LOS ANGELES, with the aiding, abetting, assistance, cooperation and direction of defendant CRAIG J. STRAUCH, as aforesaid, did willfully, knowingly, maliciously, and in bad faith based on the subjective and uncorroborated information provided by defendant STRAUCH, as aforesaid, place plaintiff under felony arrest under color and pretense of legal authority, without warrant or other process, and imprison plaintiff against his will and over his objection, to his damage and detriment, as herein described, said defendants having had no reasonable cause to believe that plaintiff had committed a felony, in violation of Penal Code Sections 146 and 836, depriving plaintiff of his right to have his person secure from unreasonable seizure, search, unjustifiable force and bodily harm without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

22. On or about May of 1986, at some time following plaintiff's felony arrest, in the vicinity of Canoga Park, California, defendant STRAUCH, acting as an employee, agent, and representative of the Los Angeles Police Department of defendant CITY OF LOS ANGELES, in the functional capacity of an L.A.P.D. followup investigator after plaintiff's false arrest had been conducted, willingly, knowingly, intentionally, and maliciously accessed

and made available as an exhibit which was used against plaintiff at his criminal trial a computer printout of his Department of Motor Vehicles record, depriving plaintiff of his right to have his person secure from unreasonable seizure, search, and unjustifiable force without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

23. As a proximate result of the aforedescribed acts and omissions of defendants, and each of them, plaintiff suffered great embarrassment, humiliation, intimidation, fear, anxiety, anguish, degradation, and severe emotional distress, all to plaintiff's general damages in the sum of $120,000.00.

24. That the aforedescribed acts and omissions of defendants, and each of them, were done by each said defendant knowingly, intentionally, maliciously, and in bad faith, for the purpose of vexing, harassing, annoying, injuring, and oppressing plaintiff, with a reckless indifference to, and callous disregard for, the consequences of their actions in violating plaintiff's rights; and by reason thereof, plaintiff is entitle to, and claims, exemplary and punitive damages against each individual defendant personally (not the taxpayers) in the sum of $30,000.00.

FOURTH CAUSE OF ACTION
(Unreasonable Search)

25. Plaintiff realleges each and every allegation contained in Paragraphs 1 through 10, 12 through 17, and 19 through 24, inclusive, of this first amended complaint, and incorporates the same herein by reference as if fully set forth hereat.

26. On or about the 11th day of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, as a proximate result of the false arrest herein alleged, defendant ANTHONY R. STAVROPOULOS and DOES III through VII, inclusive, while acting within the course and scope of their employment as police officers of

defendant CITY OF LOS ANGELES, did willfully, intentionally, maliciously, and in bad faith, conduct an illegal search of plaintiff's person and effects, including his personal wallet and contents thereof, which search was general, exploratory, and unreasonable in scope, not based on a reasonable expectation that evidence relating to the supposed crime for which plaintiff was arrested would be found, and without a specific and articulable suspicion that a crime of violence was involved or a reasonable belief at the time of the initial encounter that plaintiff was hostile, violent, armed, and/or dangerous, such conduct depriving plaintiff of his right to have his person secure from unreasonable seizure, search, unjustifiable force and bodily harm without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

27. On or about the 11th day of May, 1986, at an in the City of Los Angeles, County of Los Angeles, State of California, defendants STAVROPOULOS, SHANNON, SGT. MORGAN, and DOES III through XII, while acting within the course and scope of their employment as police officers of defendant CITY OF LOS ANGELES, being without reasonable cause to have arrested plaintiff for a felony offense or to conduct a full search of plaintiff's person and effects, did willfully, knowingly, intentionally, maliciously, and in bad faith, in exploitation of their police powers, use the contrived felony custodial arrest as a pretext to conduct a full body and strip search of plaintiff's person in an arrogant, abusive, and offensive manner, using degrading, humiliating, intimidating, and oppressive police custodial tactics, including the terrorizing and torturing of plaintiff for not readily and voluntarily submitting to defendants' demands whether or not they violated plaintiff's constitutional rights or standards of decency and dignity, such conduct depriving plaintiff of his right to have his person secure from unreasonable seizure, search, unjustifiable force, abuse, and bodily harm without

due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

28. As a proximate result of the aforedescribed acts and omissions of defendants, and each of them, plaintiff suffered great embarrassment, humiliation, intimidation, fear, anxiety, anguish, degradation, and gross indignities of a dehumanizing nature exceeding all bounds of that which any human being should have to tolerate in a civilized society, all to plaintiff's general damages in the sum of $120,000.00.

29. The aforedescribed acts and omissions of defendants, and each of them, were done by each such defendant knowingly, intentionally, maliciously, and in bad faith for the purpose of vexing, annoying, harassing, injuring, and oppressing plaintiff, and intentionally inflicting emotional distress thereby, with a reckless indifference to, and callous disregard for, the consequences of their action in violating plaintiff's rights; and by reason of such outrageous conduct, plaintiff is entitled to, and claims, exemplary and punitive damages against each individual defendant personally (not the taxpayers) in the sum of $30,000.00.

FIFTH CAUSE OF ACTION

(Assault, Battery, Excessive Force)

30. Plaintiff realiages each and every allegation contained in Paragraphs 1 through 10, 12 through 17, 19 through 24, 26 through 29, inclusive, of this first amended complaint, and incorporates the same herein by reference as if fully set forth hereat.

31. On or about the 11th day of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, defendant STAVROPOULOS, while acting within the course and scope of his employment as a police officer of defendant CITY OF LOS ANGELES, did willfully, intentionally, maliciously, in bad faith, and without provocation, commit battery upon plaintiff in

violation of Penal Code Section 242, by placing handcuffs on him immediately upon arrival at the scene, without first questioning plaintiff, and after discovering by a patdown search that plaintiff was unarmed, all the while plaintiff exhibiting no signs of violence, resistance or an attempt to escape, such excessive conduct depriving plaintiff of his right to have his person secure from unreasonable seizure, unjustifiable force, and brutality without due process of law, in violation of Article I Sections 1, 7(a) and 13 of the California Constitution.

32. On or about the 11th day of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, defendant PATRICK SHANNON, while acting within the course and scope of his employment as a police officer of defendant CITY OF LOS ANGELES, did willfully, intentionally, maliciously, and in bad faith, for the purpose of vexing, annoying, harassing and intimidating plaintiff, commit an assault, in violation of Penal Code Section 240, upon plaintiff as plaintiff stood defenseless in handcuffs, by shaking his gloved, clenched fist in plaintiff's face in a violent and threatening manner causing plaintiff to fear for his safety, while said defendant stated rudely and angrily to plaintiff "Look man, you can take your probable cause and shove it!", exhibiting behavior unbecoming an officer, such excessive conduct depriving plaintiff of his right to have his person secure from unreasonable seizure, unjustifiable force and brutality without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

33. On or about the 11th day of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, as a proximate result of the false arrest herein alleged, defendant SGT. MORGAN and DOES III through XII, inclusive, while acting within the course and scope of their employment as police officers of defendant CITY OF LOS ANGELES, did willfully, intentionally, maliciously, and in bad faith, commit an assault

and battery upon plaintiff in a cruel and inhumane manner, in violation of Penal Code Sections 147, 240, and 242, by shooting plaintiff with a taser gun, in violation of Penal Code Section 244.5(b), in a vicious, malicious, wanton, and cruel manner, in an offensive attack upon plaintiff as a means of torture to coerce plaintiff into submitting to their demands, regardless of the violation of plaintiff's Constitutional rights and standards of decency and dignity, and regardless of the fact that at no time was there ever any judicial determination of probable cause for the felony arrest which brought him into those circumstances in the first place, and plaintiff at no time posing any danger of threat to the lives and safety of defendants or others present. Such grossly excessive and inhumane conduct deprived plaintiff of his right to have his person secure from unreasonable seizure, search, unjustifiable and excessive force and brutality without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

34. On or about the 11th day of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, as a further proximate result of the false arrest herein alleged, defendants STAVROPOULOS and DOES III through XII, inclusive, while acting within the course and scope of their employment as police officers of defendant CITY OF LOS ANGELES, did willfully, intentionally, maliciously, and brutally commit a battery upon plaintiff in violation of Penal Code Section 242, by physically forcing plaintiff to the floor after plaintiff had been tortured with three separate rounds of electrical charges from a taser gun by defendants SGT. MORGAN and DOES III through VII, and the taser darts still penetrating plaintiff's body, and then forcibly stripping plaintiff's clothing off his body in the presence of others, against his will and over his objections, such unreasonable, excessive, and brutal conduct depriving plaintiff of his right to have his person secure from unreasonable seizure, search,

unjustifiable and excessive force and brutality without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

35. On or about the 11th day of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, as a further proximate result of the false arrest herein alleged, defendant PATRICK SHANNON committed an assault upon plaintiff, in violation of Penal Code Sections 240 and 244.5(b), by standing over plaintiff while he was on the floor, pointing a second taser gun at plaintiff in a dangerous and threatening manner, ready to shoot plaintiff at any time, while plaintiff was being battered as aforesaid, by defendants STAVROPOULOS and DOES III through XII, and the taser darts of the first shooting still penetrating plaintiff's body, such conduct depriving plaintiff of his right to have his person secure from unreasonable seizure, search, unjustifiable and excessive force without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

36. On or about the evening of the 12th day of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, as a further proximate result of the false arrest herein alleged, defendant DOE XIII assaulted plaintiff, in violation of Penal Code Section 240, by threatening to have plaintiff's fingers broken, to have him knocked unconscious, and further shot by a taser gun, unless plaintiff voluntarily submitted to their further demands without a warrant, without a court order, and without reasonable or probable cause, in violation of plaintiff's rights, causing plaintiff to fear for his life, limb, and safety. Such conduct deprived plaintiff of his right to have his person secure from unreasonable seizure, search, unjustifiable and excessive force without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

37. On or about the 13th day of May, 1986,

at and in the City of Los Angeles, County of Los Angeles, State of California, as a further proximate result of the false arrest herein alleged, defendant THOMAS A. YOST (sued herein as DOE I), whom defendant LARRY R. DOLLEY fraudulently introduced to plaintiff as being "the commanding officer" for the purpose of deceiving plaintiff, in the presence of and with the acquiescence of said defendant DOLLEY and defendants DOES XIV through XIX, inclusive, assaulted plaintiff, in violation of Penal Code Section 240, by threatening to have plaintiff knocked unconscious unless plaintiff submitted to their demands that he voluntarily surrender his property, to wit, his fingerprints, without a warrant and without a court order, such acts being without reasonable or probable cause, in violation of plaintiff's rights, which threats by "the commanding officer" plaintiff fully believed would be carried out, terrorizing plaintiff causing him to fear for his life, limb, and safety. Such conduct deprived plaintiff of his right to have his person secure from unreasonable seizure, search, unjustifiable and excessive force without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

38. As a proximate result of the aforedescribed acts and omissions of defendants, and each of them, plaintiff suffered extremely shocking and paralyzing physical pain and suffering to his body and nervous system; severe emotional distress and trama intentionally inflicted; gross indignities and cruelty of a dehumanizing nature exceeding all bounds of that which any human being should have to tolerate in a civilized society; great embarrassment; fear for his life, limb, safety, and well-being; anxiety; anguish; depression; and furthermore, an extremely painful operation for the removal of taser darts from his body, all to plaintiff's general damages in the sum of $240,000.00.

39. The aforedescribed acts and omissions of defendants, and each of them, were done by each

said defendant knowingly, intentionally, maliciously, and in bad faith, for the purpose of vexing, annoying, harassing, injuring, and oppressing plaintiff, and intentionally inflicting severe physical pain and emotional distress, with reckless indifference to, and callous disregard for, the consequences of their action in violating plaintiff's rights and standards of decency, dignity, and humanity; and by reason of such outrageous, brutal, and cruel conduct, plaintiff is entitled to, and claims, exemplary and punitive damages against each individual defendant personally (not the taxpayers) in the sum of $60,000.00.

SIXTH CAUSE OF ACTION

(Illegal taking of fingerprints)

40. Plaintiff reallages each and every allegation contained in Paragraphs 1 through 10, 12 through 17, 19 through 24, 26 through 29, and 31 through 39, inclusive, of this first amended complaint, and incorporates the same herein by reference as if fully set forth hereat.

41. On or about the 13th day of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, as a further proximate result of the false arrest herein alleged, defendants THOMAS A. YOST, (sued herein as DOE I), LARRY R. DOLLEY, and DOES XIV through XIX, each acting within the course and scope of their employment as police officers of defendant CITY OF LOS ANGELES, did willfully, intentionally, maliciously and forcibly take and extract from plaintiff his personal property, to wit, his fingerprints, without a warrant, without a court order, and without any judicial determination of probable cause for the false felony arrest which brought plaintiff there in the first place; the forcible taking of plaintiff's fingerprints was done under deception, fraud, misrepresentation and false identity of "the commanding officer", and by the use of coercion and duress of plaintiff and fear of threatened brutal police handling of his person, such as knocking him unconscious, unless

he volunteered to such taking. Such conduct deprived plaintiff of his right to liberty, happiness, privacy, and to have his person secure from unreasonable seizure, search, unjustifiable and excessive force without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

42. As a proximate result of the aforedescribed acts of defendants, and each of them, plaintiff suffered fear, anxiety, anguish, intimidation, and further intrusion into his privacy, to plaintiff's general damages in the sum of $120.000.00.

43. The aforedescribed acts and omissions of defendants, and each of them, were done by each said defendant knowingly, intentionally, maliciously, and in bad faith, for the purpose of vexing, annoying, harassing, injuring, and oppressing plaintiff, with reckless indifference to, and callous disregard for, the consequences of their action in violating plaintiff's rights and his privacy; and by reason of such outrageous, brutal, and cruel conduct, plaintiff is entitled to, and claims, exemplary and punitive damages against each individual defendant personally (not the taxpayers) in the sum of $30,000.00.

SEVENTH CAUSE OF ACTION

(Failure to take Plaintiff Before a Magistrate)

44. Plaintiff realiages each and every allegation contained in Paragraphs 1 through 10, 12 through 17, 19 through 24, 26 through 29, 31 through 39, and 41 through 43, inclusive, of this first amended complaint, and incorporates the same herein by reference as if fully set forth hereat.

45. From shortly after midnight on the 11th day of May, 1986, through the 16th day of June, 1986, the last day to bring plaintiff to trial under the "speedy trial statute", at and in the City of Los Angeles, County of Los Angeles, State of California, defendants ANTHONY R. STAVROPOULOS, PATRICK SHANNON, SGT. MORGAN, SGT. FERGUSON, DET. DOLLEY, LT. LEE LORENZE, DET. YOST, and DOES III through XIX, each acting as police

officers of defendant CITY OF LOS ANGELES, did willfully, knowingly, intentionally, and maliciously fail and refuse to take plaintiff before a magistrate during his six-days' false imprisonment, or at any time whatsoever, to have judicially determined the probable cause for his warrantless felony arrest, in violation of Penal Code Sections 849(a) and 825, despite plaintiff's demands that he be so taken forthwith at the time of his arrest on May 11, 1986. Such conduct deprived plaintiff of his personal liberty, in violation of Penal Code Section 236, and his right to life, liberty, safety, happiness and privacy, as well as his right to be secure in his person and effects against unreasonable seizure without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution.

46. As a proximate result of the aforedescribed acts and omission of defendants, and each of them, plaintiff was forced to spend six days of imprisonment without due process of law or any judicial proceeding whatsoever, with all of the attendant unlawful, abusive, oppressive, and brutal police custodial tactics as alleged herein, based upon the subjective and uncorroborated information reported to, and knowingly taken by, defendants STAVROPOULOS and SHANNON, without oath or affirmation, as aforesaid, resulting in the warrantless felony arrest of plaintiff without probable cause nor a judicial determination thereof, plaintiff thereby having suffered loneliness, alienation, humiliation, intimidation, fear, anxiety, anguish, torment, loss of freedom, of movement, of travel, of fresh air and sunshine, of communication, of sleep, loss of love, affection, and fellowship with family and friends, all to plaintiff's general damages in the sum of $120,000.00.

47. The aforedescribed acts and omissions of defendants, and each of them, were done by each said defendant knowingly, intentionally, maliciously, and in bad faith, for the purpose of vexing, annoying, harassing, injuring, and oppressing plaintiff, and with reckless indifference

to, and callous disregard for, the consequences of their action in violating plaintiff's rights and by reason of plaintiff is entitled to, and claims, exemplary and punitive damages against each individual defendant personally (not the taxpayers) in the sum of $30,000.00.

EIGHTH CAUSE OF ACTION
(Illegal Arraignment)

48. Plaintiff reallages each and every allegation contained in Paragraphs 1 through 10, 12 through 17, 19 through 24, 26 through 29, 31 through 39, 41 through 43, and 45 through 47, inclusive, of this first amended complaint, and incorporates the same herein by reference as if fully set forth hereat.

49. On or about the 16th day of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, as a further proximate result of the false arrest of plaintiff, as herein alleged, defendant PATRICIA G. SCHWARTZ, while acting within the course and scope of her employment as a Municipal Court Commissioner and ex officio deputy clerk of said Court, did willfully, knowingly, intentionally, maliciously, and in bad faith, masquerade as a magistrate at the time plaintiff was first brought captive to a court on the sixth day of his imprisonment following his warrantless felony arrest, said defendant SCHWARTZ knowing and is charged with the responsibility of knowing that she did not have jurisdiction over the person and subject-matter of plaintiff's criminal matter, plaintiff never having been taken to a magistate, nor probable cause judicially determined for his warrantless felony arrest, nor a prior commitment to stand trial signed by a magistrate, all as constitutionally and statutorily required under due process of law; nevertheless defendant SCHWARTZ willfully and knowingly proceeded to act both as judge and prosecutor, in total absence of subject-matter jurisdiction, and conducted an illegal and bogus arraignment by judicial fiat, there being no oath or affirmation, no probable cause, no review by

the District Attorney, no verified complaint, no magistrate, no judicial determination of probable cause, no notice to plaintiff that he had been arrested on a felony, no notice that his felony had been or was then being disposed of, entering plaintiff's plea of "not guilty" to misdemeanor charges, thereby denying plaintiff a trial on the felony for which he was arrested, and further denying plaintiff's request to be released O.R., requiring the posting of bail in the sum of $500.00 in order to gain plaintiff's release from imprisonment, all without judicial authority to do so, such conduct depriving plaintiff of his right to due process of law in violation of Article I, Sections 7(a) and 15 of the California Constitution.

50. As a proximate result of the aforedescribed acts and omissions of defendants, and each of them, plaintiff suffered extreme prejudice, hardship, degradation, detriment in being forced, by judicial fiat, and in bad faith, to undergo the expense, harassment, and rigors of an unwarranted criminal prosecution, without due process of law, all to plaintiff's general damages in the sum of $120,000.00.

51. The aforedescribed acts and omissions of defendants, and each of them, were done by each said defendant knowingly, intentionally, maliciously, and in bad faith, for the purpose of vexing, annoying, harassing, injuring, oppressing, and deceiving plaintiff, by simply "rubber-stamping" the police action and "railroading" plaintiff to an unwarranted misdemeanor criminal prosecution, without due process of law, with a careless and reckless indifference to, and callous disregard for, the consequences of their action in violating plaintiff's rights, and by reason thereof, plaintiff is entitled to, and claims, exemplary and punitive damages against each individual defendant personally (not the taxpayers) in the sum of $30,000.00.

NINTH CAUSE OF ACTION

(Failure to Discharge Mandatory Duty)

52. Plaintiff reallages each and every

allegation contained in Paragraphs 1 through 10, 12 through 17, 19 through 24, 26 through 29, 31 through 39, 41 through 43, 45 through 47, and 49 through 51, inclusive, of this first amended complaint, and incorporates the same herein by reference as if fully set forth hereat.

53. On or about and between the 11th and 16th days, inclusive, of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, defendants ANTHONY R. STAVROPOULOS, PATRICK SHANNON, SGT. MORGAN, SGT. FERGUSON, DET. DOLLEY, DET. YOST, LT. LORENZE, and DOES III through XIX, each acting within the course and scope of his employment as police officers of defendant CITY OF LOS ANGELES, knowing, or reasonably should have known, that plaintiff was arrested on May 11, 1986, for a felony without a warrant or lawful process therefor, and was immediately thereafter confined, restrained, an imprisoned as a proximate result of said warrantless arrest, and having a mandatory duty to see to it that plaintiff was brought before a magistrate without unnecessary delay, as provided in Penal Code Section 849(a), nevertheless failed to discharge such mandatory duty set forth in Penal Code Section 849(a), which failure to comply is deemed to be a misdemeanor under Penal Code Section 145.

54. As a proximate result of the aforedescribed acts and omissions of defendants, and each of them, plaintiff was denied his statutory right to have a prompt judicial determination by a detached and neutral magistrate of whether or not there was reasonable or probable cause to arrest plaintiff for a felony under the particular circumstances of his case, which proceeding would have assured plaintiff of a prompt decision regarding the validity of his arrest and imprisonment before being subjected to all the further intrusions into his privacy and dignity, as alleged herein, in violation of plaintiff's constitutional, statutory, and personal rights; Penal Code Section 849(a) was enacted for the

purpose of protecting against such violation of rights as that suffered by plaintiff herein, as aforesaid, due to defendants' breach thereof, and defendant CITY OF LOS ANGELES is therefore liable under the provisions of Government Code Section 815.6 for such breach by the remaining defendants, and each of them; and by reason thereof, plaintiff is entitled to, and claims general damages in the sum of $120,000.00.

TENTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

55. Plaintiff reallages each and every allegation contained in Paragraphs 1 through 10, 12 through 17, 19 through 24, 26 through 29, 31 through 39, 41 through 43, 45 through 47, 49 through 51, 53, and 54, inclusive, of this first amended complaint, and incorporates the same herein by reference as if fully set forth hereat.

56. On or about and between the 11th and 16th days, inclusive, of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, defendants CRAIG J. STRAUCH, ANTHONY R. STAVROPOULOS, PATRICK SHANNON, SGT. MORGAN, SGT. FERGUSON, DET. DOLLEY, DET. YOST, LT. LORENZE, PATRICIA G. SCHWARTZ, and DOES III through XX, inclusive, each acting within the course and scope of his employment and agency, did willfully, intentionally, maliciously, and in bad faith, inflict extreme and severe emotional distress upon plaintiff by their outrageous conduct, as alleged in this first amended complaint by (1) making subjective and uncorroborated statements, unsupported by oath or affirmation, to the police regarding plaintiff's conduct, without regard to plaintiff's apology and explanation, knowing that such subjective reporting would to a substantial certainty lead to the warrantless felony arrest and imprisonment that followed; (2) the taking of such subjective and uncorroborated information, absent any oath or affirmation in support thereof, upon which to base their police reports without regard to plaintiff's explanation and justification for his actions, including the

abandoned, wrecked, unregistered, and illegal status of the vehicle in question; (3) the immediate handcuffing by police of plaintiff, without provocation, upon their arrival at the scene without first questioning plaintiff; (4) assaulting plaintiff by shaking a clenched fist in his face and making rude and insulting remarks, while plaintiff stood defenseless in handcuffs behind his back; (5) disregarding plaintiff's demands to be taken to a magistrate forthwith for a judicial determination of probable cause for his warrantless felony arrest; (6) transporting plaintiff immediately to jail, subjecting him to abusive, arrogant, oppressive, and intrusive police custodial tactics and search without warrant or probable cause;, (7) torturing plaintiff with a taser gun inside the jail facility, plaintiff at no time being armed, violent, or a threat to the life, safety, and well-being of others; (8) terrorizing plaintiff with threats of violence, such as breaking his fingers, knocking him unconscious, and further tasering him, unless plaintiff voluntarily surrendered his rights at their demand; (9) subjecting plaintiff to long and extended imprisonment at various jail facilities even after his imperative release time had already expired and without ever having been brought to a magistrate; (10) treating plaintiff, who is a minister with no criminal record whatsoever, as if he were a violent criminal and a dangerous person, with all the attendant indignities that no human being whomever should have to tolerate in a civilized society. That besides the inhumane treatment, described in this first amended complaint, the conditions at the County Jail facility, to which the defendants herein had plaintiff transferred, were so disheartening and shattering to plaintiff's conscience, that it continues to bring recurring and constant nightmarish flaskbacks and reminders of the cruel harshness and callousness with which all inmates alike, regardless of their background and character, whether or not they had been convicted of a crime, are treated.

57. That as a direct and proximate result of the outrageous conduct, as aforesaid, of defendants, and each of them, plaintiff has developed a fear, distrust, disrespect, and disdain for all law enforcement officers in general, and experiences a negative intestinal reaction (a sick feeling) just at the sight of anything suggesting their presence, such as police helicopters, searchlight beams, police cars, flashing lights, police uniforms and regalia, swarming presence, etc., all suggesting a despotic police state accountable to no one. This reaction occurs even at the sight of such identifying factors shown on television in numerous police dramas and news reporting. Plaintiff's great and grievous emotional distress has caused him to honestly believe and become convinced that law enforcement officers are not there "to serve and to protect", but to harass, oppress, debase, and subjugate the public whenever they take a notion to do so, in order to keep the public under intimidation and fear. That by virtue of the outrageous conduct by defendants, and each of them, as aforesaid, said defendants knew, and reasonably should have known, that such conduct would have caused plaintiff such negative emotional reactions as he has, and it was reasonably foreseeable by said defendants that such would happen. That at least until plaintiff's arrest and subsequent imprisonment were judicially determined to be lawful and based upon objective factors of probable cause, defendants, and each of them, had no right or privilege to treat plaintiff in the outrageous manner that they did, as described herein. By reason of the continued emotional distress suffered by plaintiff, as aforesaid, plaintiff is entitled to general damages in the sum of $240,000.00.

58. That the aforedescribed acts and omissions of defendants, and each of them, knowing and chargeable with the responsibility of knowing of plaintiff's circumstances of arrest and imprisonment, were done by each such defendant

knowingly, intentionally, maliciously, and in bad faith, for the purpose of vexing, harassing, annoying, injuring and oppressing plaintiff, with a willful, wanton, and callous disregard of the consequences of their outrageous actions and conduct, in violating plaintiff's rights and principles of decency and dignity, and by reason thereof, plaintiff is entitled to, and claims, exemplary and punitive damages against each individual defendant personally (not the taxpayers) in the sum of $60,000.00.

ELEVENTH CAUSE OF ACTION
(Negligence)

59. Plaintiff reallages each and every allegation contained in Paragraphs 1 through 10, 12 through 17, 19 through 24, 26 through 29, 31 through 39, 41 through 43, 45 through 47, 49 through 51, 53, 54, and 56 through 58, inclusive, of this first amended complaint, and incorporates the same herein by reference as if fully set forth hereat.

60. On or about and between the 11th and 16th days, inclusive, of May, 1986, at and in the City of Los Angeles, County of Los Angeles, State of California, defendants CRAIG J. STRAUCH, ANTHONY R. STAVROPOULOS, PATRICK SHANNON, SGT. MORGAN, SGT. FERGUSON, DET. DOLLEY, DET. YOST, LT. LORENZE, PATRICIA G. SCHWARTZ, and DOES III through XX, inclusive, each acting within the course and scope of his employment and agency, as herein described, in doing, or failing to do, the things alleged in this first amended complaint, acted negligently, carelessly, recklessly, and unlawfully in failing to discharge their responsibilities and duties imposed upon them by law and by reasonable standards, the risk of harm being reasonably foreseeable to said defendants, and each of them, under the circumstances described herein.

61. As a proximate result of the negligence and carelessness of defendants, and each of them, as aforesaid, plaintiff suffered the aforedescribed damages by defendants' violation of plaintiff's

Constitutional, statutory, and personal rights of dignity, and by reason thereof, plaintiff is entitled to general damages in the sum of $120,000.00.

WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as follows:

(1) For general damages:
$1,440,000.00

(2) For punitive damages against each individual defendant personally (not the taxpayers):
300,000.00

(3) For reasonable attorney's fees, if applicable;

(4) For costs of suit herein; and

(5) For such other and further relief as the court may deem proper.

Dated: March 23, 1990

/s/_____
RONALD L. BRANSON
Plaintiff in Propria Persona

PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS & STATUTES

U.S. Constitution:

Fourth Amendment: The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment: No person shall... be deprived of life, liberty, or property, without due process of law; ...

Fourteenth Amendment: ...[N]or shall any state deprive any person of life, liberty, or property, without due process of law; ...

California Constitution:

Article I, Section 7(a): A person may not be deprived of life, liberty, or property without due process of law....

Article I, Section 13: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Federal Statute:

Title 28 U.S.C. §1257(a): Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Consti-

tution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

California Evidence Code:

EC §664: **Official Duty Regularly Performed--Arrests.**

It is presumed that official duty has been regularly performed. This presumption does not apply on an issue as to the lawfulness of an arrest if it is found or otherwise established that the arrest was made without a warrant.

California Penal Code:

PC §7(9): The word "magistrate" signifies any one of the officers mentioned in Section 808;

PC §17(b)(4): (b) When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: ... (4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

PC §145: **Officer delaying to take arrested person before magistrate.**

Delaying to take person arrested before a magistrate. Every public officer or other person, having arrested any person upon a criminal charge, who willfully delays to take such person

before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor.

PC §146: **Arrests, seizures, levies, or dispositions without process or authority.**

Making arrests, etc., without lawful authority. Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without a regular process or other lawful authority therefor, is guilty of a misdemeanor.

PC §242: **Battery defined.**

Battery defined. A battery is any willful and unlawful use of force or violence upon the person of another.

PC §807: **Magistrate defined.**

Magistrate defined. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

PC §808: **Persons designated as magistrates.**

The following persons are magistrates:

1. The judges of the Supreme Court.
2. The judges of the courts of appeal.
3. The judges of the superior courts.
4. The judges of the municipal courts.
5. The judges of the justice courts.

PC §825: **Appearance before magistrate; unnecessary delay; maximum time; right of attorney to visit prisoner; officer refusing to permit visit, offense, forfeiture.**

The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed

herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following.

PC §836: **Peace officers; arrest under warrant; grounds for arrest without warrant.**

A peace officer may make an arrest in obedience to a warrant, or may, pursuant to the authority granted him by the provisions of Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, arrest a person:

1. Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. Whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed.

PC §849(a): **Arrest without warrant; duty to take prisoner before magistrate and file complaint...**

(a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate.

* * *

PERTINENT QUOTATION OF SPECIFIC PORTIONS OF RECORD

(The following portions are taken from the Statement of the Case):

[APP.1]: "This is the ***first time*** the lack of 'cause of action' of the complaint was brought to petitioner's attention, having never arisen either at trial, nor at oral argument before this court. Petitioner requested oral argument for the purpose of answering questions and addressing any doubts entertained by those deciding this appeal wherein clarification could be made before a decision was reached. Had 'failure to state a cause of action' been brought to petitioner's attention at oral argument, he would have orally argued the issue or requested opportunity to present a supplemental brief to respond to that claim ***before*** an appellate decision was made.

'Since failure to state a cause of action was not in question in the trial court (contrariwise, for plaintiff could not have failed to prove his cause of action if there was no cause of action to be proved), there was no reason to argue the issue on appeal. By this court bringing in that issue for the first time as part of its decision on appellate review as a grounds to foreclose relief (especially after the issue could have been raised by the court at oral argument if it was of concern to them), this court has seriously prejudiced petitioner by placing him in the untenable position of having to make a first opportunity post-decisional response to that new issue in this petition for rehearing though never brought into issue, argued or raised by any counsel or by the trial court. Such procedure totally deprives plaintiff of all opportunity to either argue in defense of the issue, stand on his complaint, or to

move for leave to amend and state a cause of action as to defendant STRAUCH.

"This is a fundamental issue to this entire appeal and petitioner must be allowed an opportunity to respond at the earliest possible time; and unless this court seriously considers petitioner's argument on this issue at this time and makes an informed and reasoned response to it by a written modified or supplemental decision reflecting the particulars of that consideration, petitioner will be deprived of procedural due process on this appeal which will in turn destroy the post-deprivation process of redress of alleged wrongdoing against defendant STRAUCH by this state tort action protected by the state and federal constitutions." [REH 1-2].

[APP.2]: "As the *first opportunity* to respond, petitioner addresses the 'cause of action' issue at this time (referring to himself as 'plaintiff'):

"FALSE ARREST/FALSE IMPRISONMENT (Third cause of action): 'False arrest' and 'false imprisonment' are not separate torts.... (citations) Collins v. City/County of San Francisco (1975) 50 Cal.App.3d 671, 673, 123 C.R. 525. When an arrest is made without legal process, all that need be alleged to charge unlawful arrest is the arrest without process, the imprisonment, and the damages. Collins v. Owens (1947) 77 Cal.App.2d 713, 715, 176 P.2d 372. The form of action is based upon an illegal arrest, and no matter *ex post facto* can legalize an act which was illegal at the time it was done. Id. p.716. The rule would seem to be that where without process an arrest is made, it is not necessary to allege that such arrest was unlawful;... In other words, if the act complained of is one, the mere stating of which constitutes a trespass, it is manifestly illegal. Id. p.718.

"The elements of a cause of action for false imprisonment are an arrest without legal process, imprisonment, and damages. (citations) Ramsden v. Western Union (1977) 71 Cal.App.3d 873, 879, 138 C.R. 426. It is not necessary to allege that the

imprisonment was unlawful. Collins v. Owens (supra) p.716. A cause of action for false imprisonment entitling a plaintiff to relief does not require any allegation of damages other than the fact of confinement itself. DuLac v. Perma Trans Products, Inc. (1980) 103 Cal.App.3d 937, 945, 163 C.R. 335.

"Plaintiff alleges false arrest by STRAUCH, i.e., detaining plaintiff, grabbing property from him, and conducting a citizen's misdemeanor arrest of him without warrant or other process in the complaint. [CT 101:15-23].

"As this court recently stated in Ramsden... '[t]he fact that the arrest was made by Los Angeles police officers and not directly by defendants does not render them immune, because a party who "authorizes, encourages, directs, or assists an officer to do an unlawful act, or procures an unlawful arrest, without process, or participates in the unlawful arrest or imprisonment, is liable."' (citations) Id. p.880. DuLac v. Perma Trans Products, Inc. (supra) 103 Cal.App.3d at 941.. "All who take part in or assist in the commission of a false imprisonment are joint tortfeasors, and may be joined as defendants without an allegation or proof of a conspiracy. (citations)" Oppenheimer v. City of Los Angeles (1951) 104 Cal.App.2d 551, 553, 232 P.2d 30; Harden v. San Francisco Bay Area Rapid Transit Dist. (1989) 215 Cal.App.3d 7, 15. As shown above, [CT. 101:1-23], STRAUCH did even more than encourage or participate in the unlawful arrest, he actually made the unlawful arrest without process. See also the complaint at CT 144. "[I]nitially STRAUCH had made a citizen's arrest of plaintiff evidenced by his putting down his name and address on a "Private Person's Arrest Form" furnished by LAPD; furthermore, STRAUCH is identified as "P/A" on the "Preliminary Case" report bearing his signature (attached to the arrest report, "Exhibit C" to the complaint [CT 144]) which stands for "Arresting Private Pers" as shown on the face of the arrest report." The court in Harden (supra)

stated "[The informant] took an active role in accomplishing [the] arrest.... Thus, [the informant] did participate directly in the actual arrest, detention and imprisonment of Harden; not only did he pass false information to [the police] with malice, but he directly and actively participated... in bringing about the unlawful arrest." Id. pp 15-16.

"The first interaction of the police and STRAUCH, involving restraint of plaintiff's liberty, put into full force and effect the "reliable source" theory which would carry the entire program to fruition. Nothing would interfere with that "reliable source" scheme-- not plaintiff's proffered explanation, not the District Attorney's evaluation, not a magistrate's examination. It would serve as LAPD's pass-key, allowing them to bypass all due process safeguards required by law founded upon constitutional principles of separation of powers. See People v. Wallace 169 Cal.App.3d at 409 (discussed later under the conspiracy allegations).

"By the police unilaterally converting the felony arrest after the oppressive felony booking procedures were over, without following due process requirements of establishing the evidence of probable cause by an independent evaluation of the arrest by the District Attorney and a judicial examination thereof by a neutral magistrate (discussed under conspiracy), it became apparent that the police knew there wasn't probable cause for plaintiff's felony arrest and that it was used as a pretext, as alleged. "The arrest without probable cause had a 'quality of purposefulness' in that it was an 'expedition for evidence... in the hope that something might turn up.'" Brown v. Illinois (1975) 422 U.S. 590, 605; Dunaway v. New York (1979) 442 U.S. 200, 218. "An arrest may not be used as a pretext to search for evidence." United States v. Lefkowitz (1932) 285 U.S. 452, 467.

"Next, plaintiff alleged that LAPD, with the aiding, abetting, assistance, cooperation, and direction of STRAUCH, did willfully, knowingly, maliciously, and in bad faith, based on the

subjective and uncorroborated information provided by STRAUCH, place plaintiff under felony arrest without warrant or other process, and imprison plaintiff, to his damage and detriment, said defendants having had no reasonable cause to believe that plaintiff had committed a felony, in violation of P.C. §§146 and 836. [CT 103:18-28].

"[I]n order to support a finding that reasonable cause for arrest existed based on the report of an informer, evidence must be presented by LAPD to the court that reliance on the information was reasonable based on all the information known to the police officer at the time of the warrantless arrest." See Pollock v. Superior Court (1969) 272 Cal.App.2d 548, 551, 77 C.R. 565. "The test is not whether the informant was reliable, but whether, under the circumstances, the officer was reasonable in relying on the information he provided." People v. Hall (1974) 42 Cal.App.3d 817, 822, 117 C.R. 228, citing People v. Lara 67 Cal.2d 365, 374-75, 62 C.R. 586, 432 P.2d 202; People v. Balassy 30 Cal.App.3d 614, 620, 106 C.R. 461; and People v. McFadden 4 Cal.App.3d 672, 687, 84 C.R. 675.

"LAPD's warrantless felony arrest of plaintiff was deficient in the following ways: (1) Failure to test the reasonableness of LAPD's reliance on STRAUCH's statements based on all the circumstances that existed at the time of arrest (see Pollock p.551); (2) Failure to test the reasonableness of their belief that plaintiff had committed ***a felony*** (P.C. §836(3)); and (3) Failure to present plaintiff's explanation as part of the evidence to test the reasonableness mentioned in (1) and (2) (see People v. Superior Court (Simon) (1972) 7 Cal.3d 186, 197 n.10). Those three tests of reasonableness were to have been presented to (a) the District Attorney and (b) to a magistrate. (Discussed under conspiracy).

"Not only did the police fail to take these tests to the District Attorney or to a magistrate for examination and determination, but the moment LAPD converted their felony arrest into a

misdemeanor. they eliminated altogether the subject matter that was to be tested-- namely the ***felony arrest*** --thereby precluding any possibility of thereafter justifying the arrest according to due process of law.

"LAPD usurped the power of the District Attorney and also the authority of a magistrate in plaintiff's arrest. Plaintiff was arrested without a warrant. P.C. §849(a) states "When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate."

"The statutes requiring the officer to bring the defendant (person arrested) promptly before a magistrate are mandatory and impose a legal duty upon the officer. Intentional noncompliance is subject to both civil and criminal sanctions. The officer is liable civilly for false imprisonment (Dragna v. White (1955) 45 Cal.2d 469, 472, 289 P.2d 428, 2 Witkin Summ. Torts §84, 79 A.L.R. 13). He is also guilty of a misdemeanor. (P.C. §145). (See Witkin, Cal. Crim. Proc. (1963) "Proceedings Before Trial" §117 p.114).

"Penal Code §825 states (in pertinent part): "The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays...". In interpreting §825, the appellate court has stated that the words "two days" in the statute does not mean "48 hours." As the court said "The right to be taken before a magistrate without unnecessary delay is fundamental. ... For this court to replace the words 'two days' in Penal Code section 825 with the words '48 hours' would amount to a 'judicial amendment' where the Legislature has not so amended this statute. This is not our function. ... In the absence of compelling countervailing

considerations, we must assume that the Legislature knew what it was saying and meant what it said. (Tracy v. Municipal Court (1978) 22 Cal.3d 760, 764, 150 C.R. 785, 587 P.2d 227)." (Youngblood v. Gates (1988) 200 Cal.App.3d 1302, 1311).

"Applying the above to plaintiff's arrest, the evidence submitted with the complaint shows that plaintiff was arrested on May 11, 1986 ("051186") at 12:10 a.m. ("0010"). (See the arrest report attached as Exhibit C to the complaint). Pursuant to P.C. §849(a) plaintiff was to be taken before a magistrate without unnecessary delay and a complaint "stating he charge against the arrested person" laid before such magistrate. According to P.C. §145, this responsibility belonged to the arresting officers; and according to P.C. §825, this responsibility was to have been fulfilled "in any event within two days after his arrest", i.e., no later than May 13, 1986 in plaintiff's case. These steps cover (a) what must be done, (b) by whom, and (c) when. As stated, defendant STRAUCH, by law, is a joint tortfeasor with the police after having participated in and assisted them in the commission of false arrest/false imprisonment of plaintiff-- even without the allegation or proof of a conspiracy. See Oppenheimer v. City of Los Angeles (supra) 104 Cal.App.2d at 553; Harden v. San Francisco etc. (supra) 215 Cal.App.3d at 15.

"The complaint referred to in §849(a) is not an accusatory pleading charging plaintiff with a crime, prepared and filed by LAPD. (See Stanley v. Justice Court (supra) 55 Cal.App.3d at 250). Rather, it must be a complaint stating the charge against plaintiff as decided by the District Attorney pursuant to his crime-charging discretion, if he decides plaintiff should be prosecuted at all after reviewing the evidence brought to him by the arresting officers. (See People v. Wallace (supra) 169 Cal.App.3d at 409; also Govt. Code §§26500, 26501). Together with the complaint as drawn up by the District Attorney, the arresting officers must present "evidence...that

reliance on the information (given by STRAUCH) was reasonable based on all the information known to the police officer at the time of the warrantless arrest." (See Pollock v. Superior Court (supra) 272 Cal.App.2d at 551). That evidence must necessarily consist of (a) the police reports, (b) the statements given to the police by STRAUCH supported by oath or affirmation; and (c) plaintiff's explanation as part of the arrest report to be examined by the magistrate.

"Since plaintiff's complaint repeatedly alleges as a fact failure to take to a magistrate. Who, therefore, is a magistrate, and is there any evidence contradicting plaintiff's factual allegation that there never was one involved either before or after plaintiff's arrest? The term "magistrate" in California is statutorily defined and the office is statutorily created and authorized. As used in Penal Code §§825 and 849(a) "magistrate" is defined as ollows: "The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context: ... 9. The word 'magistrate' signifies any one of the officers mentioned in section 808; ...". (Penal Code §7(9)). Penal Code §808 lists the following persons as "magistrates": (1) The judges of the Supreme Court; (2) The judges of the Courts of Appeal; (3) The judges of superior courts; (4) The judges of the municipal courts; (5) The judges of the justice courts. Interpreting §808, the California Attorney General stated: "A magistrate is only one of the officers named in Penal Code Section 808. (Pen. Code §7 subd. 9). Penal Code Section 808, subdivision 4, lists "the judges of the municipal courts" as magistrates. Section 808 does not list a temporary judge of the municipal court as being a magistrate, thus a temporary judge does not have the power to issue a search warrant or an arrest warrant." (61 Ops.Atty.Gen. 487, 488). Likewise, Section 808 does not list a commissioner of the municipal court as being a magistrate.

"Not only was co-defendant SCHWARTZ not a magistrate by statutory definition, but the function she performed in plaintiff's case, i.e., conducting an "arraignment", is not the function performed by a person sitting as a magistrate. It was not even possible for SCHWARTZ to be able to sit as a magistrate, since she was not a "judge of the municipal court." (P.C. §808). The law statutorily defines the scope of power of a magistrate and the courts have interpreted the function of a magistrate as not invoking the jurisdiction of any court. Therefore, an "arraignment" is jurisdictionally excluded from the province of a magistrate. Penal Code §§825 and 849(a) cannot refer to "arraignment".

"Initiation of proceedings before a magistrate invokes no "trial jurisdiction" of any court; preliminary proceedings do not invoke the jurisdiction of an inferior court. (In re Geer (1980) 108 Cal.App.3d 1002, 1006, 166 C.R. 912). Equally it must be said that these preliminary proceedings do not invoke jurisdiction of an inferior court. The action taken by a judge of an inferior court who has issued the order for arrest, or before whom an arrested person is brought after arrest without a warrant (see P.C. §849(a)), is not action by a judge of any court. It is action by a magistrate as incumbent of a distinct and statutory office. (Kosky v. James (1975) 47 Cal.App.3d 349, 355, 120 C.R. 754; People v. Hawkins (1978) 85 Cal.App.3d 960, 966, 149 C.R. 855). In contrast to the above citation, an "arraignment" is action by a judge (or commissioner) of a court, i.e., the Municipal Court. An arraignment is a court proceeding; an appearance before a magistrate is not a court proceeding, but a function that is "incumbent of a distinct and statutory office."

"A magistrate must be distinguished from a court. It is noted here that the case of Pollock v. Superior Court (supra) 272 Cal.App.2d at 551, where it states "evidence must be presented to the court" by reason of the function described,

i.e., "in order to support a finding that reasonable cause for an arrest existed", would necessarily have to mean "presented to the magistrate", since that is what the law requires for that purpose. (See discussion below regarding interchangeable use of the words "court" and "magistrate").

"As was stated in Amos v. Superior Court, 182 Cal.App.2d 343, 6 C.R. 252, "...a judge who sits as a magistrate does not carry his court or his judicial attributes with him except to the extent that they inhere in the office of magistrate." (People v. Hardin (1967) 256 Cal.App.2d Supp. 954, 959, 64 C.R. 307). A magistrate is a purely statutory officer whose powers and functions all judges of the courts of record are authorized to exercise and perform. However, "when a judge of a particular judicial district acts in the capacity of a magistrate, he does not do so as a judge of a particular court, but rather as one who derives his powers from the provisions of Penal Code sections 807 and 808...." (People v. Hawkins (supra) p.966; People v. Superior Court (Chico etc. Health Center (1986) 187 Cal.App.3d 648, 654, 232 C.R. 165). Contrast the above citation with "arraignment." First of all, it states "when a judge of a particular judicial district acts in the capacity of a magistrate..." which in the case of an arraignment conducted by a commissioner, the situation could not apply by definition. The fact that arraignments may be conducted by commissioners is one reason that arraignments are (and must be by operation of law) placed jurisdictionally apart and separate from proceedings before a magistrate.

"The words "court" and "magistrate" may be construed interchangeably provided such construction would be consistent with the whole system of law under which it is applicable. (People v. Brandon (1989) 206 Cal.App.3d 1565, 1570-71; Landrum v. Superior Court (1981) 30 Cal.3d 1, 14, 177 C.R. 325, 634 P.2d 352). This principle would apply to Pollock mentioned above. The Brandon court has stated "We are aware that on occasion, a

statute referring to the power of a 'court' to undertake an act will be construed to include a magistrate, where the applicable statutory scheme compels such a construction." (206 Cal.App.3d at 1570-71). "We should follow, even if somewhat belatedly, a cardinal rule of statutory construction, that 'every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.'" (Landrum v. Superior Court (supra) 30 Cal.3d at 14).

"While caution is warned about the interchangeable use of the words "court" and "magistrate", permitting it only when "it would be consistent with the whole system of law under which it is applicable". such interchange of terms sets a dangerous precedent when jurisdictional lines are crossed. as in the case of "arraignment" and "magistrate." The same principle must be applied in the latter case-- it must be "consistent with the whole system of law under which it is applicable." In the case of the arraignment/magistrate application, those terms are not consistent with the whole system of law under which it is applicable.

"If possible. significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. (Select Base Materials v. Board of Equalization (1959) 51 Cal.2d 640, 645, 355 P.2d 672). See also Youngblood v. Gates (supra) 200 Cal.App.3d at 1311. According to Brandon, Landrum, and Select Base Materials, cited above, the word "magistrate" in Penal Code §§825 and 849(a) should be construed with reference to the regular processes of law required by the mandates of the Fourth Amendment to the United States Constitution. Fourth Amendment protection does not involve arraignments; it is therefore a misconstruction of §§825 and 849(a) to interpret either or both of those statutes as bringing an arrestee to "arraignment." Fourth Amendment protection must come before an individual is subjected to plead to

criminal charges filed against him in a court of law. To be meaningful protection, it must precede arraignment. As the California Supreme Court has ruled "Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police." (People v. Tarantino (1955) 45 Cal.2d 590, 594, 290 P.2d 505). The Fourth Amendment is designed to prevent, not simply to redress, unlawful police action. (Chimel v. California, 395 U.S. 752, 766 n.12; Steagald v. United States (1981) 451 U.S. 204, 213). Unlawful police action is not prevented once criminal charges are filed against an individual and he is faced with having to plead to criminal charges in a court of record before the police action is tested before a magistrate.

"The word "magistrate" used in any Penal Code section is specifically statutorily defined in the Code, as aforesaid, and it is not defined as "arraignment court." (Penal Code §§7(9), 807, 808). A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense. (Penal Code §807). Contrariwise, "a temporary judge does not have the power to issue a search warrant or an arrest warrant." (61 Ops.Atty.Gen. 487, 488). Likewise the same is true of an arraigning commissioner of the municipal court because a commissioner is not included in P.C.§808. The Fourth Amendment (and its counterpart in California, Article I, Section 13 of the California Constitution) states "no warrants shall issue but upon probable cause, supported by oath or affirmation...". Therefore, as an officer having power to issue a warrant for arrest (P.C. §807), a magistrate thereby is an officer having power to determine probable cause for arrest based on the Fourth Amendment and the California Constitution requirement for the issuing of warrants. The bulwark of Fourth Amendment protection is the Warrant Clause. (Franks v. Delaware (1978) 438 U.S. 154, 164). The significance of the Warrant Clause is not the warrant itself, but the requirement of probable

cause. "While warrants were not required in all circumstances, the requirement of probable cause... was treated as absolute." [emph. added] (Dunaway v. New York (1979) 442 U.S. 200, 208).

"Accordingly, in California, under the Fourth Amendment's requirement of probable cause for all arrests, whether with or without a warrant, a magistrate is vested by statute with the power to determine the probable cause for an arrest by virtue of his power to issue an arrest warrant, as aforesaid, which power becomes an absolute duty for a warrantless arrest. (See Dunaway p.208).

"Since a magistrate is a judicial officer (see P.C. §808), the power to determine probable cause for an arrest is, then, a judicial function --not a function of the jury. "What is probable cause...is not a question of fact for the jury, but one of law for the court [i.e., magistrate], to be decided in accordance with the circumstances at the time of the detention, unhampered by the outcome of the charge against the plaintiff of the public offense or by the conclusions of the trial court. (citations)." (Collyer v. S.H. Kress & Co. (1936) 5 Cal.2d 175, 181). Therefore, it is legally conclusive that a conviction does not establish the existence of probable cause. "Reasonable or probable cause is a question of law...to be decided by the court" [i.e. magistrate]. (People v. Jaurequi (1956) 142 Cal.App.2d 556, 559-560, 298 P.2d 896, quoting from People v. Brite, 9 Cal.2d 666, 687).

"Therefore, according to California law, plaintiff was to have been taken to a magistrate (P.C. §849(a)) by the arresting officers (P.C. §145) after the officers took his warrantless felony arrest and related evidence to the District Attorney for his initial crime-charging decision (People v. Wallace (supra) 169 Cal.App.3d at 409), but in any event no later than two days after arrest (P.C. §825), i.e., no later than May 13, 1986. The magistrate (as defined in P.C. §808) was to have determined the reasonableness of (a) the officers' reliance on statements given them by STRAUCH (Pollock v. Superior Court (supra) 272

Cal.App.2d at 551), and (b) the officers' belief that plaintiff had committed a felony (P.C. §836(3)). That determination was to have been based on (a) the statements of STRAUCH signed by him under oath (Art.I, Sec.13, California Constitution; Fourth Amendment, U.S. Constitution), and (b) plaintiff's explanation for his conduct at the scene (People v. Superior Court (Simon) (supra) 7 Cal.3d at 197 n.10). No accusatory pleading charging plaintiff with any crime was to have been prepared and filed by LAPD. No prosecutorial action was to have been taken against plaintiff until the above steps were completed. The officers' obligation would have been discharged when they physically brought plaintiff before a magistrate. (Stanley v. Justice Court (supra) 55 Cal.App.3d at 250).

"None of the above steps was taken in plaintiff's case. Everything that took place, from the first encounter by STRAUCH, through all actions by LAPD, the Sheriff, and by all co-conspirators participating in the scheme whether named or not, are bogus, void and a nullity. Plaintiff is entitled to damages and to have his criminal record restored to the same condition as it existed prior to May 11, 1986.

Plaintiff's right to have the regular processes of law duly followed after his arrest is secured by the California Constitution, Article I, Sections 7(a) and 15. To have conducted an arraignment or other criminal proceeding against plaintiff in the absence of the required and necessary processes of law (the District Attorney and magistrate proceedings) is violative of the State Constitution, i.e., "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches."

"Nothing in the Tort Claims Act removes liability for false imprisonment. (Sullivan v. County of Los Angeles (1974) 12 Cal.3d 710, 715, 117 C.R. 241, 527 P.2d 865). Govt Code §820.4 specifically preserves the common law liability for False

Imprisonment. Accordingly, discretionary immunity does not apply.

"The Legislature has specifically excepted the issue of the lawfulness of a warrantless arrest from the general presumption that an official duty has been regularly performed. (Evid.Code §664). (Cervantez v. J.C. Penney Co. (1979) 24 Cal.3d 579, 592 n.8, 156 C.R. 198, 595 P.2d 975). The mere fact of a warrantless arrest is not conclusive of the existence of probable cause for that arrest. Our Supreme Court has noted that a greater showing of probable cause is required to justify a warrantless arrest than to justify the issuance of a warrant. (People v. Cohn (1973) 30 Cal.App.3d 738, 748, 106 C.R. 579). In plaintiff's case, there was no showing of probable cause or any test of reasonableness of the warrantless arrest by STRAUCH or the police.

* * *

"UNREASONABLE SEARCH (Fourth cause of action):

"Defendant STRAUCH is also a joint tortfeasor with the police in this cause of action, whether or not a conspiracy is alleged or proved as aforesaid, since Unreasonable Search flows directly out of False Arrest/False Imprisonment in which STRAUCH participated.

"Plaintiff alleges that on or about May 11, 1986, [the police] conducted an illegal search of plaintiff's person and effects, including his personal wallet and contents thereof, which search was general, exploratory, and unreasonable in scope, not based on a reasonable expectation that evidence relating to the supposed crime for which plaintiff was arrested would be found, and without specific articulable suspicion that a crime of violence was involved or a reasonable belief that plaintiff was hostile, violent, armed, and/or dangerous. [CT 105:18 - 106:5].

"All searches of plaintiff following his warrantless felony arrest depend upon the reasonableness of the arrest itself which was to be tested by a magistrate. The reasonableness of

plaintiff's arrest was never submitted to any independent forum, whether District Attorney or magistrate as required by due process of law. The felony arrest never went beyond the determination of probable cause by LAPD itself who conducted it with the aid, assistance and participation of STRAUCH; the warrantless felony arrest simply vanished unilaterally without plaintiff's knowledge or consent. Neither STRAUCH nor LAPD's arrest was ever tested for reasonableness, an act that cannot be tolerated by our basic system of checks and balances.

"An arrested person is not invariably taken to a police station or confined; if an arrestee is taken to the police station, that is no more than a continuation of the custody inherent in the arrest status. (Illinois v. Lafayette (1983) 462 U.S. 640, 645, 77 L.Ed.2d 65, 103 S.Ct. 2605). The arrests never having been made legitimate through due process mandates, all searches of plaintiff as a result of those arrests are likewise not legitimate by law.

"Searches of both the person arrested and the place where the arrest is made derive their legality in the absence of a search warrant from the existence of a lawful arrest. Without probable cause to arrest, subsequent searches either of person or property violates the Fourth Amendment. (Charles v. United States (9th Cir.1960) 278 F.2d 386, 388 [emph. added]). Power over the body of the accused is the essence of his arrest; the two cannot be separated.... Once the body of the accused is validly subjected to the physical dominion of the law, inspections of his person, regardless of purpose, cannot be deemed unlawful..., unless they violate the dictates of reason either because of their number or their manner of perpetration. (Id. pp 388-9 [emph. added]). Plaintiff's "body [was not] validly subjected to the physical dominion of the law" and any "inspections of his person, regardless of the purpose, [was] deemed unlawful." "Power over the body" of plaintiff not having been obtained by a

valid arrest, was neither obtained for any searches of his person or property.

"A search contemporaneous with a warrantless arrest is specially safeguarded since "[s]uch an arrest may constitutionally be made only upon probable cause, the existence of which is subject to judicial examination, see Henry v. United States, 361 U.S. 98, 100; and such an arrest demands the prompt bringing of the person arrested before a judicial officer, where the existence of probable cause is to be inquired into. (Chimel v. California (1969) 395 U.S. 752, 782-3, 23 L.Ed.2d 685, 89 S.Ct. 2034).

"In considering the legitimacy of any search in California, the important considerations are whether the officer had reasonable cause (before the search) to make an arrest and whether the search... was or was not more intrusive than would reasonably be justified as incident to an arrest. (See United States v. Rabinowitz, 339 U.S. 56, 60-64, 70 S.Ct. 430, 94 L.Ed.2d 653). (People v. Simon (1955) 45 Cal.2d 645, 648, 290 P.2d 531). In People v. Brown (45 Cal.2d at 640) [it was] held that a search incident to an arrest could not be justified in the absence of "reasonable cause" under Penal Code Section 836. Accordingly, the search of defendant's person may be justified only if he was committing or attempting to commit an offense in the officer's presence (P.C. §836(1)), or if the officer had reasonable cause to believe he had committed a felony (P.C. §836(3)). (People v. Simon (supra) 45 Cal.2d at 648). Penal Code Section 836 was violated by LAPD, for they neither observed the commission of a crime, nor had reasonable cause to believe a felony had been committed as evidenced by their unilateral discarding of their only possible justification for arrest under P.C. §836. Furthermore, whether the officer in plaintiff's case had reasonable cause to believe he committed a felony was never tested by law, and therefore the existence of reasonable or probable cause was not established. Whether or not the arrest of a guilty defendant is lawful, it is clearly

unreasonable if the officer has no "reasonable cause" to believe the defendant guilty, and a search incident thereto can be no more reasonable than the arrest itself. (People v. Brown (supra) 45 Cal.2d at 644). It is of no consequence to guess what the determination of a magistrate would have been had the regular processes been followed, the search subsequent to an arrest without process likewise is inherently illegal.

"The arrest is not presumed to be lawful when made without a warrant (Evid.Code §664), in fact, quite the contrary, only due process of a magistral determination can save it. The California Supreme Court stated that as a "search" a booking inventory remains subject to the restraints of reasonableness under the Fourth Amendment and of Article I, Section 13 of the California Constitution. (People v. Hamilton (1985) 41 Cal.3d 211, 228). A concurring opinion in Hamilton states "It cannot be deemed reasonable simply because it occurs in connection with a jailhouse booking." (Id. p.242). Thus, inventory searches (whether of wallets or otherwise) are not constitutionally routine for all jailhouse bookings.

"It is alleged in Parag. 27 of the complaint that [the police] "being without reasonable cause to have arrested plaintiff for a felony offense or to conduct a full search of plaintiff's person and effects, did willfully, knowingly, intentionally, maliciously, and in bad faith, in exploitation of their police powers, use the contrived felony custodial arrest as a pretext to conduct a full body and strip search of plaintiff's person in an arrogant, abusive, and offensive manner, using degrading, humiliating, intimidating, and oppressive police custodial tactics, including the terrorizing and torturing of plaintiff for not readily and voluntarily submitting to defendants' demands whether or not they violated plaintiff's constitutional rights or standards of decency and dignity...". [CT 106:16-28].

* * *

"ASSAULT, BATTERY, EXCESSIVE FORCE (Fifth cause of action): Just as STRAUCH is a joint tortfeasor in previous causes of action, he is also such in this one.

"The first incident of excessive force alleged in the complaint is the handcuffing of plaintiff by the police. It is alleged that [the police] "willfully, intentionally, maliciously, in bad faith, and without provocation, commit battery upon plaintiff in violation of Penal Code Section 242, by placing handcuffs on him immediately upon arrival at the scene, without first questioning plaintiff, and after discovering by a patdown search that plaintiff was unarmed, all the while plaintiff exhibiting no signs of violence, resistance or an attempt to escape." [CT 108:14-21].

"Upon arrival at the scene and exiting the police vehicle, the officer immediately asked STRAUCH "Is this the suspect?" to which STRAUCH answered "Yes." Immediately after the word "Yes", the officer conducted a patdown search of plaintiff and placed plaintiff in handcuffs. Nothing more than the word "Yes" was stated by STRAUCH before plaintiff was searched and handcuffed. Whether those events took one minute, or two minutes, it was in practical terms an "immediate" handcuffing of plaintiff of which nothing serious could have been learned to establish reasonable cause to arrest, particularly since the one or two minutes includes a patdown, finding that he was unarmed, no violence, resistance, or attempt to escape, and done without questioning plaintiff as the testimony of both officers indicate. Plaintiff does not refute that the patdown search and handcuffing of him took one or possibly two minutes, but he does refute, as does common sense, that anything else meaningful could have or did take place in that same time. The essential elements of an arrest are: (1) taking a person into custody, and (2) actual restraint of the person or his submission to custody. (People v. Hatcher, 2 Cal.App.3d 71, 75, 82 C.R. 323; People v. Parker (1978) 85 Cal.App.3d 439, 443, 148 C.R.

513). Custody occurs if the suspect is physically deprived of his freedom of action in any significant way or is led to believe, as a reasonable person, that he is so deprived. (People v. Arnold, 66 Cal.2d 438, 448, 58 C.R. 115, 426 P.2d 515; People v. Parker (supra) p.443). Custody is an objective condition and is not solely dependent upon the subjective intent of the interrogator to arrest the suspect. (People v. Herdan, 42 Cal.App.3d 300,306, 116 C.R. 641; Parker (supra) p.443).

"An arrest requires probable cause to believe a specific crime has been committed. (People v. Campbell (1981) 118 Cal.App.3d 588, 594, 173 C.R. 442). At the time of handcuffing plaintiff, the police did not have articulable facts regarding any specific crime supposedly committed by plaintiff. Handcuffing was not required to question plaintiff, since he was not armed, there was no violence, no resistance, or implication of threat of escape as evidenced by his waiting approximately 15 minutes for the police to arrive. Before an officer detains an individual for questioning by means of physical force or a show of authority, he "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." (Terry v. Ohio (1968) 392 U.S. 1, 16, 19 fn.16, 20-21, 20 L.Ed.2d 889, 902, 904, 905-6, 88 S.Ct. 1868; Cunha v. Superior Court (1970) 2 Cal.3d 352, 355-6, 85 C.R. 160, 466 P.2d 704). There was none in plaintiff's arrest.

"Even if the police do not formally arrest a suspect, that suspect may nevertheless be under actual arrest if the restraint employed by the police goes beyond that which is reasonably necessary for a detention. ...this degree of restraint must be justified. (People v. Campbell (supra) pp 595-6). There has been no showing that [the officer] was in any danger or believed himself to be in any danger after he had established that the [suspect] was unarmed. Further [the officer] had the support of a second officer. (Id. p.596).

The identical circumstances existed in plaintiff's case at bar. There was no justification for the arrest of plaintiff one or two minutes after their arrival at the scene. The conduct of the officers exceeded a reasonable detention under the circumstances, in that there was not an increasing degree of justification for the increasing degree of intrusion. (Id. p.597).

* * *

" FAILURE TO TAKE PLAINTIFF BEFORE A MAGISTRATE (Seventh cause of action): As the seventh cause of action, plaintiff alleges that defendants "Did willfully, knowingly, intentionally, and maliciously fail and refuse to take plaintiff before a magistrate during his six-days' false imprisonment, or at any time whatsoever, to have judicially determined the probable cause for his warrantless felony arrest, in violation of Penal Code Sections 849(a) and 825, despite plaintiff's demands that he be so taken..." [CT 116:18-23].

"The statutes requiring the officer to bring the person arrested promptly before a magistrate are mandatory and impose a legal duty upon the officer. Intentional noncompliance is subject to both civil and criminal sanctions. The officer is liable civilly for false imprisonment (Dragna v. White (1955) 45 Cal.2d 469, 472, 289 P.2d 428, 2 Witkin Summ. Torts §84, 79 A.L.R. 13). He is also guilty of a misdemeanor. (Penal Code §145). (See Witkin, California Criminal Procedure (1963) "Proceedings Before Trial" §117 p.114).

"Plaintiff has shown intentional failure by LAPD in plaintiff's case to take his case before a magistrate as required by law. Plaintiff has fully defined "magistrate" according to law, as well as the legal responsibilities and functions of a magistrate, specifically showing that it is not the function of a magistrate to conduct arraignments. Also, a magistrate's functions cannot be delegated to a jury.

"'Magistrate' as used in the California Penal Code is statutorily defined. Its functions are specifically delineated and delimited --the issuance

of legal process. It is that connotation and interpretation that must be given to "magistrate" when used in the Penal Code, since it is jurisdictional. It cannot be applied generically as a matter of law. While all magistrates must be judges, all judges are not magistrates, and one does not act in both capacities simultaneously. Their functions are jurisdictionally separate. "The authority of a magistrate is purely statutory; he is not a judge." (Burris v. Superior Court of Tulare County (1974) 43 Cal.App.3d 530).

"Penal Code §§849(a) and 825 mandate that an arrestee be taken before a magistrate, as that term is used in the Penal Code. It was not done in plaintiff's case. In fact, none of the steps required for due process was taken by defendants.

"Torts consist of the breach of duties fixed and imposed upon the parties by the law itself,..." (Prosser & Keeton, Torts §1 p.4). Whether intentional or negligent, a tort 'involves a violation of a legal duty [emph. theirs], imposed by statute, contract or otherwise, owed by the defendant to the person injured. Without such a duty, any injury is 'damnum absque injuric' -- injury without wrong." (4 Witkin Summ. (8th Ed. 1974) §5, p.2306 and cases cited therein). (County of San Luis Obispo v. Abalone Alliance (1986) 178 Cal.App.3d 848, 865, 223 C.R. 846). (5 Witkin Summ. (9th Ed. 1988) §6 p.61). In plaintiff's case at bar, the intentional failure of compliance by defendants is shown on the record herein.

* * *

"INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Tenth cause of action): As the tenth cause of action, plaintiff alleges the intentional infliction of emotional distress. The allegation in paragraph 56 of the complaint is very elaborate and specific, listing ten (10) instances of outrageous conduct as follows:

"(1) Making subjective and uncorroborated statements, unsupported by oath or affirmation, to the police regarding plaintiff's conduct, without

regard to plaintiff's apology and explanation, knowing that such subjective reporting would to a substantial certainty lead to the warrantless felony arrest and imprisonment that followed;

"(2) The taking of such subjective and uncorroborated information, absent any oath or affirmation in support thereof, upon which to base their police reports without regard to plaintiff's explanation and justification for his actions, including the abandoned, wrecked, unregistered, and illegal status of the vehicle in question;

"(3) The immediate handcuffing by police of plaintiff, without provocation, upon their arrival at the scene without first questioning plaintiff;

"(4) Assaulting plaintiff by shaking a clenched fist in his face and making rude and insulting remarks, while plaintiff stood defenseless in handcuffs behind his back;

"(5) Disregarding plaintiff's demands to be taken to a magistrate forthwith for a judicial determination of probable cause for his warrantless felony arrest;

"(6) Transporting plaintiff immediately to jail, subjecting him to abusive, arrogant, oppressive, and intrusive police custodial tactics and search without warrant or probable cause;

"(7) Torturing plaintiff with a taser gun inside the jail facility, plaintiff at no time being armed, violent, or a threat to the life, safety, and well-being of others;

"(8) Terrorizing plaintiff with threats of violence, such as breaking his fingers, knocking him unconscious, and further tasering him, unless plaintiff voluntarily surrendered his rights at their demand;

"(9) Subjecting plaintiff to long and extended imprisonment at various jail facilities even after his imperative release time had already expired and without ever having been brought to a magistrate;

"(10) Treating plaintiff, who is a minister with no criminal record whatsoever, as if he were a violent criminal and a dangerous person, with all

the attendant indignities that no human being whomever should have to tolerate in a civilized society.

"Furthermore, plaintiff alleges that "besides the inhumane treatment, described in this first amended complaint, the conditions at the County Jail facility, to which the defendants herein had plaintiff transferred, were so disheartening and shattering to plaintiff's conscience, that it continues to bring recurring and constant nightmarish flashbacks and reminders of the cruel harshness and callousness with which all inmates alike, regardless of their background and character, whether or not they had been convicted of a crime, are treated." [CT 122:27 - 124:14].

"The elements of a prima facie case for the tort of Intentional Infliction of Emotional Distress are (1) extreme and outrageous conduct, (2) intention of causing or reckless disregard of the probability of causing emotional distress, (3) suffering severe emotional distress, and (4) proximate causation. (Cervantes v. J.C. Penney Co. (1979) 24 Cal.3d 579, 593, 156 C.R. 198, 595 P.2d 975). Physical injuries are not necessary in cases involving extreme and outrageous intentional invasions of one's mental and emotional tranquility. (Alcorn v. Anbro Eng'g. Inc. (1970) 2 Cal.3d 493, 498, 86 C.R. 88, 468 P.2d 216). When physical harm doesn't accompany the emotional distress, behavior that may be considered outrageous include (1) abusing a relation or position of power to damage plaintiff's interests, (2) knowing that plaintiff would be susceptible to damage through mental distress, or (3) acting intentionally or unreasonably, recognizing that such action is likely to result in mental distress. (Agarwal v. Johnson (1979) 25 Cal.3d 932, 946, 160 C.R. 141, 603 P.2d 58). (Rest.2d Torts §46 Com.(e)).

"In false imprisonment, it is the fact of confinement alone that constitutes the harm caused; and without a warrant or other legal process, the harm is absolutely certain, as is the resultant intentional infliction of emotional

distress. Having been falsely imprisoned for six full days without legal process shows circumstantial evidence that the emotional distress suffered was of such substantial quantity and duration that no reasonable man in a civilized society should be expected to endure it. (Kiseskey v. Carpenters Trust etc. (1983) 144 Cal.App.3d 222, 231, 192 C.R. 492).

"The existence of severe distress is evidenced by the extreme and outrageous character of defendants' conduct itself. (Rest.2d Torts §46 Com.(j)); Golden v. Dungan (1971) 20 Cal.App.3d 295, 308, 97 C.R. 577). Emotional distress includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. (Id. p.311). Conduct which is not expected to be tolerated by a decent society and which is of a nature that is expected to cause, and does cause, mental distress must be alleged. (Agarwal v. Johnson (supra) 25 Cal.3d 932, 946; Logan v. So. Calif. RTD (1982) 136 Cal.App.3d 116, 130, 185 C.R. 878). The complaint, when read as a whole, certainly reflects that plaintiff has done so.

* * *

"CONSPIRACY (Second cause of action):

"Plaintiff has left this cause of action to be discussed last, primarily because this Court's decision states that a cause of action for Conspiracy wasn't stated because there are no allegations of an underlying civil wrong. [Decision p.19]. This court has overlooked the many underlying civil wrongs that have been alleged in the complaint and requests that it take cognizance of them and reconsider its decision accordingly.

"Plaintiff has alleged an elaborate conspiracy among all defendants. This entire case began with defendant STRAUCH, without whom none of the acts of the rest of the defendants would have been possible. LAPD relied entirely and exclusively upon the word of STRAUCH. STRAUCH is sued in this action as an individual working in close

conjunction, cooperation, and conspiracy with the police officers under whose authority and direction he operated. [CT 74:1-9].

"LAPD supplied the "Private Person's Arrest Form" to STRAUCH after they held their private conversation with him without plaintiff's participation.

"After the arresting officers' and approval officer's sole reliance on defendant STRAUCH for plaintiff's warrantless felony arrest, the complaint alleges the acts of the conspiracy that followed as a proximate result of that felony arrest, regarding the oppressive post-arrest stationhouse booking procedures (i.e., various searches including strip search, tasering, taking fingerprints, threatening and terrorizing plaintiff, etc.) bringing in additional co-conspirators who participated each in their particular role. (See subparagraphs (p) through (bb) of the Conspiracy allegation [CT 85:1 - 93:5]).

"After plaintiff underwent three days of oppressive activities during LAPD custody resulting from the felony arrest and was transferred to Sheriff's custody at 7:00 a.m. on the fourth day of his imprisonment following arrest, the next step by LAPD in the conspiracy was to unilaterally dispose of the felony arrest [CT 93:16 - 94:15] which plaintiff alleged was used as a pretext to draw him into the felony booking procedures for vindictive purposes [CT 83:9 - 84:2]. By LAPD unilaterally dropping the felony arrest and converting it to a misdemeanor, bypassing the District Attorney and magistrate who was to examine LAPD's arrest for probable cause and to determine its felony disposition respectively, is prima facie evidence and an admission by LAPD that they did not have probable cause to arrest plaintiff for a felony. Statutorily, LAPD was barred from arresting plaintiff on a misdemeanor, having observed nothing (P.C. § 836), therefore, they are not permitted to arrest on a felony and then convert it to a misdemeanor to accomplish an illegal arrest.

This is even worse when they purposely bypass all due process checks on their illegal actions. This violates all American jurisprudence principles, and leads to unchecked arbitrary and unilateral police state tactics.

"There was no probable cause to support LAPD's felony arrest. It is noted here that the officer signing his approval of plaintiff's felony arrest (see arrest report attached as Exhibit C to the complaint [CT 141]) testified that the factors he considered when approving the arrest were (1) The observations of a sworn peace officer; (2) An instrumentality and bodily force were used (or attempted) to gain entry into the vehicle; (3) The late hour; (4) The fleeing from the scene by Defendant's accomplices. FERGUSON went on to testify that the hour of the night, the presumed reliability of STRAUCH, and the fleeing of the arrestee's accomplices were enough to establish an arresting officer's determination of probable cause to arrest and any explanation by an arrestee would not be "required." Note that "instrumentality and bodily force were used" are only uncorroborated statements made by STRAUCH which are unsupported by both physical evidence (see arrest report attached to the complaint) and observation of the police.

"Regarding 'flight from the scene' courts in California have ruled that while the time of night or flight from the scene of others present may provide reasonable cause to detain and question a suspect, those factors are not alone sufficient probable cause for arrest. (See People v. Rogers (1966) 241 Cal.App.2d 384, 387, 50 C.R. 559; also People v. Aldridge (1984) 35 Cal.3d 473, 478, 198 C.R. 538, 674 P.2d 240). Those factors merely created reasonable cause to question plaintiff-- to get his explanation-- not to be used for closing out explanation.

"Regarding the importance of questioning, courts have pointed out the importance of a suspect's explanation in order to get a objective view, and not merely depend upon the subjective

view of an officer (i.e., use the presumed reliability of an officer's statements to close out any explanation from the suspect, as FERGUSON and the arresting officers did in plaintiff's case). The California Supreme Court stated: "The police officer should remember there is no substitute for patient and thorough investigation, and should avoid drawing a hasty or pre-conceived conclusion (citing People v. Superior Court (Keifer) (1970) 3 Cal.3d 807, 828)..." People v. Superior Court (Simon) (1972) 7 Cal.3d 186, 197 n.10, 101 C.R. 837, 496 P.2d 1205. That Court also stated: "Probable cause was predicated...on the asserted "insufficiency" or "inadequacy" of the proffered explanation. Yet there may be a substantial difference between an explanation which is patently inconsistent or false and one which simply does not go into enough detail to persuade the arresting officer of its truth. An officer's subjective opinion... may well fall short of the objective probability of guilt required by the Fourth Amendment to justify an arrest or search without a warrant." (Id. p.197 n.10). The LAPD officers were not permitted probable cause to arrest only on reliance on "presumed reliability" of STRAUCH to the exclusion of a "proffered explanation" from plaintiff, and especially so when no physical evidence supports his story. The Aldridge court (supra) stated: "If there were any objective evidence to support this conclusion, the claim might be meritorious; a mere subjective speculation as to the men's purported motives, however, carries no weight." [emph. added] 35 Cal.3d at 479. Probable cause to arrest must be based upon more than mere subjective speculation, and since there was no physical evidence to support STRAUCH's words, it must "fall short of the objective probability required by the Fourth Amendment to justify an arrest". (People v. Superior Court (Simon) (supra) 7 Cal.3d at 197 n.10).

"Furthermore regarding 'flight from the scene' the California Supreme Court referring to

Sibron v. New York (1968) 392 U.S. 40, 66-7, 20 L.Ed.2d 917, 937, 88 S.Ct.1889 stated that "deliberately furtive actions and flight at the approach of strangers or law officers are strong indicia of mens rea" but that it must be "coupled with specific knowledge on the part of the officer relating the suspect to the evidence of crime" to be considered for an arrest. (People v. Superior Court (Keifer) (supra) 3 Cal.3d at 818). The same Court stated: "When confrontation took place in the nighttime..., the possibility of mistake is greater." (Id. p.825).

"As to the importance of questioning, the Supreme Court stated "Where the events are as consistent with innocent activity as with criminal activity, a detention based on those events is unlawful (citations); a fortiori, an arrest and search based on events as consistent with innocent activity as with criminal activity are unlawful. (Remers v. Superior Court (1970) 2 Cal.3d 659, 664, 87 C.R. 202, 470 P.2d 11). "When circumstances demand immediate investigation by the police, the most useful, most available tool for such investigation is general on-the-scene questioning, designed to bring out the person's explanation or lack of explanation of the circumstances which aroused suspicion..., and enables the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges." (People v. Holloway (1985) 176 Cal.App.3d 150, 153-4, 221 C.R. 394). Evidence in plaintiff's case shows that the only "investigation" resulting in his felony arrest was statements from STRAUCH. No evidence goes beyond the unsupported words of STRAUCH.

"The detective admitted that he did not take plaintiff's felony arrest to the District Attorney, nor did he believe there was any duty to do so. He testified that LAPD was authorized to unilaterally dispose of the felony arrest and file a misdemeanor complaint against plaintiff pursuant to Penal Code §17(b)(4) and LAPD Manual Section 4720.36, and that while LAPD officers are vested

with authority under Penal Code §17(b)(4) to process felony arrestees as misdemeanor offenders, the City Attorney is not vested with such authority, but must send the case to the District Attorney.

"The crime-charging power is vested in the public prosecutor, who is the District Attorney (G.C. §26500), under Government Code §26501. This prosecutorial discretion is founded upon constitutional principles of separation of powers and due process of law, and the District Attorney's unlimited discretion in the crime-charging function has been uniformly recognized. (People v. Wallace (1985) 169 Cal.App.3d 406, 409, 215 C.R. 203). The police unlawfully usurped the authority properly vested in the District Attorney as public prosecutor. (G.C. §§26500, 26501; People v. Wallace (supra) p.409). The power to transmute an arrest into a full-blown criminal prosecution, whereby the person arrested may be required to stand trial, is a significantly greater power and does not flow automatically from the power to arrest. (People v. Municipal Court (Pellegrino) (1972) 27 Cal.App.3d 193, 199, 103 C.R. 645). The arresting officer cannot prepare and file an accusatory pleading charging a defendant with a crime.... [T]he discretion whether or not to prosecute one arrested for felony without a warrant (and not otherwise released by the arresting officer under P.C. §849 subd.(b)) is vested in the District Attorney. (Stanley v. Justice Court (1978) 55 Cal.App.3d 244, 250, 127 C.R. 532). No one can institute criminal proceedings without the concurrence, approval or authorization of the District Attorney. (Rosato v. Superior Court (1975) 51 Cal.App.3d 190, 226, 124 C.R. 427; Hicks v. Board of Supervisors (1977) 69 Cal.App.3d 228, 241, 138 C.R. 101). These authorities show that the provision in the LAPD Manual, referred to above, is unconstitutional and in violation of California statute.

"Further, due process of law requires that criminal prosecution be instituted through the

regular processes of law, including the requirement that the institution of any criminal proceeding be authorized and approved by the District Attorney. The misdemeanor complaint filed against plaintiff without the District Attorney's authorization was a nullity, and the municipal court lacked jurisdiction to do anything except to dismiss the matter. (People v. Municipal Court (Pellegrino) (supra) 27 Cal.App.3d at pp 205-206). The due process clause of both the United States and California Constitutions is a bar to the deprivation of liberty except by the regular administration of the law and in accordance with general rules designed to protect individual rights. (Id. p.205). The Constitution protects plaintiff from being subject to prosecution absent a prior determination by either a magistrate or a grand jury that such action is justified. (Parks v. Superior Court (1952) 38 Cal.2d 609, 611, 241 P.2d 521).

"As stated in People v. Adams, 43 Cal.App.3d 697, 707-708: "In the case before us the statute deals with the initial determination of the charge to be filed, a decision which, in its nature, occurs before an accusatory pleading [misdemeanor complaint] is filed and thus before the jurisdiction of a court is invoked and a judicial proceeding [such as arraignment] initiated. It involves a purely prosecutorial function and does not condition judicial power in any way. The function thereby conferred relates only to what is clearly the province historically of the public prosecutor, i.e., the discretion whether or not to prosecute. ... And it is the District Attorney who is vested with discretionary power to determine whether to prosecute." (Gov.Code §26501; People v. Wallace (supra) 169 Cal.App.3d at 409-410).

"Even after the District Attorney's decision, a magistrate must determine whether or not to prosecute and on what charges based on its independent examination of probable cause for the arrest before the jurisdiction of any court is invoked. The magistrate's determination follows

the District Attorney's decision to prosecute. (People v. Municipal Court (supra) 27 Cal.App.3d at 203). The obligation of the arresting officer is discharged when he physically brings the arrestee before a magistrate without unnecessary delay. (Stanley v. Justice Court (supra) 55 Cal.App.3d at 250).

"LAPD officers in plaintiff's case never intended to take plaintiff before a magistrate. LAPD usurped prosecutorial power by unilaterally disposing of the felony altogether without plaintiff's knowledge or approval and without the knowledge or approval of the District Attorney, or a magistrate.

"By the LAPD officers usurping the authority of the District Attorney in exercising the initial determination to prosecute plaintiff as a misdemeanor offender rather than on the felony (G.C. §§26500, 26501; People v. Wallace (supra) p.409; People v. Municipal Court (Pellegrino) (supra) pp 199, 205-206; Stanley v. Justice Court (supra) p.250; Rosato v. Superior Court (supra) p.226; and Hicks v. Board of Supervisors (supra) p.241), plaintiff was thereby denied his right to a preliminary hearing before a committing magistrate prior to the institution of a criminal prosecution. (Esteybar v. Municipal Court (1971) 5 Cal.3d 119, 126-127, 95 C.R. 524, 485 P.2d 1140). In determining whether a criminal defendant should be held to answer on a felony or a misdemeanor, a committing magistrate exercises a judicial power [prior to invoking the jurisdiction of a trial court-- see In re Geer (1980) 108 Cal.App.3d 1002, 1006, 166 C.R. 912] which must be based upon an examination of the circumstances of the particular case before him. (Esteybar p.126). A defendant is entitled to have an independent determination [emph. added] of whether he should be held to answer on a felony or a misdemeanor, and this is not possible when the exercise of judicial discretion depends on the "pleasure of the executive." (Id. p.126). Constitutional jurisdiction of the court to act cannot be turned on and off at

the whimsy of either the District Attorney or the Legislature (People v. Tenorio (1970) 3 Cal.3d 89, 93, 89 C.R. 249, 473 P.2d 993) --much less by the unilateral action of the police as in plaintiff's case at bar. By virtue of unlawful police action, plaintiff was denied his right to an independent determination by a neutral and detached magistrate of the appropriateness of being subjected to criminal prosecution at all. (People v. Brice (1982) 130 Cal.App.3d 201, 209, 181 C.R. 518).

"A preliminary hearing is 'not merely a pretrial hearing.' It is a proceeding designed to weed out groundless or unsupported charges of grave offenses and to relieve the accused of the degradation and expense of a criminal trial. To this end, an accused is afforded "such fundamental rights as counsel, confrontation, the right to personally appear, the right to a hearing before a judicial officer [i.e., a magistrate], and the right to be free from unwarranted prosecution. ..." (People v. Brice (supra) p.209). Plaintiff was afforded none of these "fundamental rights" at any time.

"California courts have ruled that Penal Code §17(b)(4) is designed as a bargaining tool which can only be used by the District Attorney (not the police or the City Attorney) for the purpose of extending more lenient treatment to an offender who would likely be convicted of the felony with which he is being charged. In order for this bargaining effect to have any value, the potential for the harsher outcome must be very real not only to the District Attorney, but especially to the defendant himself. A 17(b)(4) referral is an "offer of leniency" by the District Attorney that must be presented to the defendant for his acceptance and approval before it can be implemented. The statute is not to be used merely as a means of reducing a felony to a misdemeanor on the basis that a felony conviction is unlikely, as was the case with plaintiff. Furthermore, that decision is one for the District Attorney-- not the police who arrested plaintiff on a felony based on

probable cause. That probable cause for the felony arrest must be presented to an independent source for its determination before it can be disposed of. Once the arrest is made without a warrant and based on probable cause, further examination of the lawfulness or reasonableness of that arrest is taken out of the hands of the police under principles of due process and separation of powers, as aforesaid. (See People v. Wallace (supra) 169 Cal.App.3d at 409). It is a jurisdictional as well as a constitutional concept, and unless that separation of power is honored, both concepts are violated. The arresting agency does not have jurisdiction to make prosecutorial decisions regarding their own felony arrests, as that would establish unconstitutional unilateral police action, opening the door for trumped-up felony arrests for ulterior purposes such as harassment.

"As the court in Malone v. Superior Court states, P.C. §17(b)(4) invests the District Attorney with a pre-prosecution choice which permits him to extend lenience to the defendant by a complaint designating the offense as a misdemeanor rather than as a felony. The election may be made by the District Attorney alone, provided the defendant does not object. (47 Cal.App.3d 313, 316, 120 C.R. 850 (1975)). Pragmatically, the election by the District Attorney to charge an alternatively punishable offense as a misdemeanor is not made on the abstract (and erroneous) grounds that the offense is conceptually a misdemeanor, but is rather intended to extend misdemeanor treatment to a potential felon. The purpose of 17(b)(4) is not to vest the prosecutor with the judicial prerogative of decreasing in the form of a judgment the misdemeanor-felony nature of the crime, but rather to vest the District Attorney with the right to extend more lenient treatment to an offender. (Necochea v. Superior Court (1972) 23 Cal.App.3d 1012, 1016, 100 C.R. 693).

"Both subsections (4) and (5) of Penal Code Section 17(b) are aimed at similar objectives-- to

permit the election by the District Attorney, in the case of §17(b)(4), of offenders who merit more lenient treatment, to encourage guilty pleas by limiting the potential penalty and to save court time and expense. (Malone v. Superior Court (supra) 47 Cal.App.3d at 317). Plea bargaining flows from "the mutuality of advantage" to defendants and prosecutors, each with his own reasons for wanting to avoid trial. (Bordenkircher v. Hayes (1978) 434 U.S. 357, 363). There was no "mutuality of advantage" in plaintiff's case; in fact he was not even aware of what was happening in the handling of his arrest. Even at the bogus "arraignment" proceeding on May 16, 1986, which was plaintiff's first appearance of any kind outside of jail since his arrest on May 11, plaintiff was not given any notice or opportunity whereby he was informed, for the protection of his rights as a felony arrestee, that (a) he had been arrested by LAPD for a felony, and/or (b) his felony arrest charge had been reduced by LAPD to a misdemeanor for purposes of trial. Consequently, he was not even afforded an opportunity to object since he was never informed about it, even if §17(b)(4) were considered being carried out, however, in this case it was not. At no time during the "arraignment" did anyone, including Commissioner SCHWARTZ, mention anything about 17(b)(4) or anything that implied that 17(b)(4) was attempting to be exercised by the D.A., C.A. or LAPD. As already cited, a 17(b)(4) referral is an "offer of leniency" by the District Attorney that **must be presented to the defendant for his acceptance and approval before it can be implemented.** (People v. Wallace (supra) 169 Cal.App.3d at 409). (It should be noted here that "prosecuting attorney" in P.C. §17(b)(4) can only be the District Attorney, for the City Attorney jurisdictionally cannot determine or act upon felony charges which are limited solely to the District Attorney.) Post-arrest legal process was not followed, and the court was deprived of jurisdiction to proceed.

"LAPD acted strictly in its own interests in arresting plaintiff on a trumped-up felony charge in order to be able to use its "muscle" against plaintiff through the felony booking and strip searching procedures, and when they extracted all they wanted from that, they converted their own self-interest felony arrest into a misdemeanor in order to avoid having to take the charges to the District Attorney as required by law, and having to justify their felony arrest before a magistrate. The scheme worked well because all who participated merely "followed the leader" with no regard to due process and constitutional or statutory mandates.

"Without the participation and authority by the District Attorney in the crime-charging decision in plaintiff's case, and by the unilateral decision by LAPD to prosecute plaintiff as a misdemeanor offender, plaintiff's misdemeanor prosecution following his felony arrest was not lawfully conducted in the name of "The People of the State of California." (People v. Municipal Court (supra) 27 Cal.App.3d at 200).

"According to the above legal analysis, there was no jurisdiction for:

"(a) LAPD to unilaterally dispose of plaintiff's felony arrest and convert it into misdemeanor criminal charges for prosecution; (b) the City Attorney's Office to issue a misdemeanor criminal complaint against plaintiff; (c) the filing of an accusatory pleading against plaintiff; and (d) the Municipal Court to have accepted the filing of a misdemeanor complaint (accusatory pleading) against plaintiff; without LAPD first taking the felony arrest to the District Attorney for initial prosecutorial decision, then taking the matter to a magistrate for determination of probable cause for the felony arrest and commitment to trial. Only then could prosecution be authorized.

"Accordingly, the Los Angeles Municipal Court did not acquire subject matter jurisdiction in plaintiff's criminal case for arraignment, for

trial, for conviction, for sentencing, or for any other criminal proceeding.

"The acts alleged under Conspiracy regarding the bogus misdemeanor complaint activity by LAPD is covered in subparagraphs (dd) through (hh) inclusive of the complaint [CT 93:16 - 97:12]. While several people were certainly involved in this aspect of the conspiracy, even though not named, the bottom line is STRAUCH, the sole individual upon whose uncorroborated and unsupported statements without oath or affirmation LAPD crafted the entire bogus criminal case against plaintiff with the aid and cooperation of all participants.

"Each act done in pursuance of a conspiracy by one of several conspirators is, in contemplation of law, an act for which each defendant is jointly and severally liable. (16 AmJur2d 271, Conspiracy §56). This joint and several liability of a conspirator applies to damages accruing prior to his joining the conspiracy, as well as damages thereafter resulting, regardless of whether he took a prominent or inconspicuous part in the conspiracy. (Id.) This liability of each member of a conspiracy exists whether or not a particular conspirator profited from the conspiracy. (Id.) Conspiracy liability is sufficiently shown by facts and circumstances showing a concert of action or unlawful overt acts committed in furtherance of a common design, intention, or purpose. (Id. p.280, Conspiracy §68). The essence of civil conspiracy is damages arising out of acts committed pursuant to the conspiracy. (Id. p.267, Conspiracy §49).

"The effect of alleging the existence of a conspiracy is to implicate all who participated in the common design, and thus to fasten liability on those who agree to the plan as well as those who actually carry it out. (Shick v. Bach (1987) 193 Cal.App.3d 1321, 1327, 238 C.R. 902). Civil conspiracy renders each participant in the wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and

regardless of the degree of his participation. (Id.)

"As shown by the evidence, the actions taken by the defendants, especially LAPD, were motivated by vindictiveness because plaintiff was demanding his rights and citing law for the officers to be accountable for their actions. The U.S. Supreme Court has ruled that when officers take action that is detrimental to an individual after he exercises his constitutional or statutory rights, it is presumed the action was taken pursuant to an improper vindictive motive. (United States v. Goodwin (1982) 457 U.S. 368, 372-3). To punish a person because he has done what the law plainly allows him to do is a due process violation "of the most basic sort." (Id. p.372). Plaintiff may not be punished for exercising a protected statutory or constitutional right. (Id.) For LAPD to have pursued any course of action, with the aid and cooperation of their co-conspirators, for the objective of penalizing and punishing plaintiff for his reliance on his legal rights is action that is "patently unconstitutional." (Bordenkircher v. Hayes (1978) 434 U.S. 357, 363; Chaffin v. Stynchcombe 412 U.S. 17, 32-33 n.20; United States v. Goodwin (supra) p.372 n.4). The unilateral decision by LAPD to convert their own felony arrest charge to a misdemeanor, instead of having the public prosecutor make the prosecutorial assessment of the societal interest in prosecution of plaintiff as the law requires, levied an improper penalty against plaintiff. (See United States v. Goodwin (supra) at p.380). [REH 2-39].

[APP.3]: "THE OPINION MISSTATES FACTS ALLEGED IN THIS CASE:

"The Court states in footnote 1 that the statement of facts in its decision on pages 2-4 "is taken from the allegations of plaintiff's complaint and is a general summary of what transpired." [Decision p.2]. However, a reading of the complaint shows that the statement of facts on which the decision is based is sanitized, eliminating the factual allegations of official

wrongdoing and misconduct. Without the factual allegations that are missing from the court's version, the state tort action would be meaningless. The opinion states as one of its reasons for denying relief in this appeal is that plaintiff failed to state a cause of action, and the material facts that would state a cause of action were eliminated from the court's written decision. Some examples of omitted material allegations are as follows:

"First paragraph: STRAUCH's uncontrollable, erratic, and frenzied conduct when accosting plaintiff [CT 78:26-27]; STRAUCH wasn't interested in plaintiff's apology and explanation [CT 79:25-26]; STRAUCH detained plaintiff without a warrant or other process, grabbed property from plaintiff's person without a warrant and without plaintiff's permission and held it for the police [CT 80:1-4]; plaintiff advised his friends to leave the scene due to the strange, uncontrollable and unpredictable behavior being exhibited by STRAUCH, fearing that it might lead to a more serious, dangerous, and even life-threatening situation [CT 80:17-21]; plaintiff waited for the police, sincerely believing at the time that the police would be more reasonable [CT 80:23-24]. [Decision, p.2]

"Second paragraph: Immediately after exiting the police vehicle, the officer asked STRAUCH "Is this the suspect?" to which STRAUCH responded "Yes", and without further questioning, handcuffed plaintiff. Plaintiff wasn't armed, wasn't under the influence of any liquor, drug or narcotic, wasn't violent, didn't pose a threat to anyone, and made no attempt to escape [CT 81:4-15]; plaintiff explained his actions and reason for being there [CT 81:25-28]; without announcement to plaintiff, STRAUCH filled out a private person's arrest form without lawful means to satisfy State constitutional and statutory mandates [CT 82:16-23]; laintiff asked "What's going on?" to which an officer replied "We're placing you under arrest" without stating charges or reading rights [CT

82:25-28]; plaintiff asked "What's the probable cause?" which brought a clenched fist in his face while he stood defenseless in handcuffs, causing plaintiff to flinch back in fear to avoid being struck, said officer stating in a rude and threatening manner "Look man, you can take your probable cause and shove it." [CT 1-7]. [Decision pp 2-3].

"Third paragraph: The police converted the unannounced citizen's arrest by STRAUCH into an LAPD warrantless felony arrest based ***solely*** on the subjective, uncorroborated, hearsay statements by STRAUCH, and intentionally ignoring plaintiff's explanation, such felony arrest being created by the police only as a pretext to draw plaintiff into full felony booking procedures for purpose of LAPD harassment and intimidation, neither STRAUCH nor any officer ever intending to take plaintiff to a magistrate for a probable cause examination of said warrantless felony arrest as required by law, nor was plaintiff ever so taken at any time, demonstrating a deliberate indifference to plaintiff's rights [CT 83:10 - 84:2]; STRAUCH signed a police report and gave police certain information of a character that stimulated the warrantless felony arrest of plaintiff by LAPD; although known to STRAUCH and the police officers, the report fails to mention (1) plaintiff's explanation for his conduct, (2) the undriven, unregistered, abandoned and wrecked condition of the vehicle; and (3) the fact that said vehicle was illegally parked on a public street. [CT 84:4-17]. [Decision p.3].

"Fourth paragraph: Upon arrival at the station, as a proximate result of the warrantless felony arrest for which there was never, at any time, a judicial determination of probable cause, the police conducted a full post-arrest stationhouse custodial search of plaintiff's person and effects, relying upon the fact of plaintiff's warrantless felony arrest as authority to do so, said search including an intensive search of plaintiff's wallet and personal papers therein; upon

plaintiff's vigorous objection to this illegal search, the officer said "Go ahead and object-- we can search for weapons and contraband." At no time did plaintiff pose a danger or threat to the safety and well-being of anyone present. [CT 85:1-15]; the paragraph then omits entirely plaintiff being dragged by the police about 25 feet to the strip search cell over his objection violating his constitutional and personal rights to privacy, decency and dignity [CT 85:17 - 86:2]; it omits entirely the assault and battery by the police with a taser gun to forcibly subject plaintiff to a visual cavity strip search without being afforded the protection of his constitutional, statutory, and personal rights, the officer committing acts of torture upon plaintiff to coerce him into submitting to their demands, intentionally inflicting extremely shocking and paralyzing physical pain and suffering to his body and nervous system, leading plaintiff ***to believe that defendant was intending to torture him to death*** [emph.added], causing severe emotional distress and trauma and continuing to the time of filing this complaint, all as a proximate result of the warrantless felony arrest for which there was never a judicial determination of probable cause [CT 86:4 - 87:3]; it omits entirely paragraph (s) alleging three separate rounds of electrical torture to plaintiff's body, at all times demanding his constitutiuonal rights to be left alone absent a warrant showing probable cause, and the forcible undressing of plaintiff while the taser darts and wires were still injected in his body, while an officer stood over plaintiff pointing ***a second taser gun at plaintiff*** in a threatening and menacing manner; at no time did plaintiff pose a danger or threat to the safety and well-being of those present [CT 87:5-21]; it also omits entirely paragraph (t) alleging the police observing plaintiff's rectal area, such conduct causing plaintiff great embarrassment, humiliation, intimidation, degradation, and gross indignities of a dehumanizing nature exceeding all bounds of that which any human being should have to

tolerate in a civilized society [a major allegation of intentional infliction of emotional distress-- see Decision p.16] [CT 87:23 - 88:4]; it omits plaintiff being subjected to a very painful operation of dart removal of three barbed taser darts that remained penetrated *in the flesh of his body* as a proximate result of the taser intrusion of his body [CT 88:9-12]; it omits entirely paragraph (v) alleging that after returning from the hospital plaintiff was booked for a felony at the police station as a proximate result of the warrantless felony arrest for which there was never a judicial determination of probable cause [CT 88:14-20]; and it omits entirely paragraphs (w) alleging the preparing and approval of the false and misleading police report [CT 88:22 - 90:4]. [Decision p.3].

"Fifth paragraph: This paragraph at the bottom of p.3 of the decision incorrectly states that plaintiff was offered to be taken to a magistrate-- plaintiff was never told at any time he could see a magistrate, and in fact, the complaint from which this fact was supposedly drawn states in several places that there was ***never any intention*** of taking plaintiff to a magistrate, plaintiff so demanding following his warrantless felony arrest to which he was never so taken or even told he would be. The correct allegation is "defendant used plaintiff's statutory and constitutional right to be brought before a magistrate as a bribe to plaintiff stating 'If you give us your fingerprints, we'll let you see a judge', neither defendant DOLLEY nor any other police officer having any intention of ever bringing plaintiff before a magistrate at any time following his warrantless felony arrest." [CT 90:10-16]; it omits entirely paragraphs (z) and (aa) alleging the terrorizing of plaintiff by LAPD threatening to send a crew down for a further use of force, to wit, the breaking of plaintiff's fingers, the additional use of a taser gun, knocking plaintiff unconscious, unless plaintiff voluntarily submitted to their demands, causing plaintiff to become terrorized and fear for his life [CT 90:18 -

91:7], and then alleging the further terrorizing the next morning when a crew of approximately four uniformed officers armed with taser guns and night sticks came to plaintiff's cell to carry out the aforedescribed threats [CT 91:9 - 92:6]. [Decision pp 3-4].

"Sixth paragraph: This paragraph omits entirely paragraph (cc) of the complaint alleging LAPD's transfer of plaintiff's custody to Sheriff's custody 15 hours beyond plaintiff's imperative release time which had expired the preceding day, and plaintiff remaining in Sheriff's custody for three additional days (further false imprisonment), all as a proximate result of plaintiff's warrantless felony arrest for which there was never, at any time, a judicial determination of probable cause [CT 93:6-15]; even the court's version "the police decided to reduce the charge against plaintiff to a misdemeanor" proves conclusively by their own acts that there was no probable cause for plaintiff's felony arrest, that the arrest was for a pretext, and that the police were practicing law without a license, and were making a prosecutorial determination reserved exclusively to the District Attorney, without whose determination the case could not proceed further. [See CT 93:16 - 94:15]; and even the Court's phrase "they had the city attorney draw up a misdemeanor complaint" shows conclusively that the officers falsely converted the subject matter of plaintiff's warrantless felony arrest into a bogus misdemeanor proceeding, although it fails to state that plaintiff's imperative release time had already expired the previous afternoon and he should no longer have been in custody. The complaint's version correctly sets forth that the police, by their persuasion and influence of their office and position, caused to be issued by the City Attorney's Office, without legal authority or justification to do so, a bogus misdemeanor complaint, i.e., an accusatory pleading, against plaintiff based upon the hearsay representations by the arresting officers of the subjective, uncorroborated statements as given to

them by defendant STRAUCH... eliminating altogether any and all judicial process on plaintiff's warrantless felony arrest as required by law, thereby subjecting plaintiff to an unwarranted, unlawful, and unconstitutional prosecution [CT 94:17 - 95:16]; the phrase "the complaint was filed in the municipal court" eliminates the allegations of the numerous due process violations which preceded the unauthorized filing of the bogus misdemeanor complaint, alleging "in the absence of which processes there was no subject matter jurisdiction to file a misdemeanor complaint against plaintiff" [CT 97:1-12]; "a commissioner issued an order remanding plaintiff to custody" fails to acknowledge that plaintiff in reality never appeared before any commissioner or any other judicial officer for any purpose to that date (May 14, 1986), such unauthorized action on the part of the commissioner contributing to the conspiracy to deprive plaintiff of his constitutional, statutory, and personal rights to be free from false imprisonment." [CT 97:14-28]; the phrase "plaintiff was transferred to the custody of the Los Angeles County Sheriff" is incorrect, since the reality as alleged in paragraph (ii) of the complaint is that plaintiff was never at any time out of custody since his arrest and there was no appearances in any court whatsoever from May 11th through May 15th inclusive. The complaint, which must be taken as true, nowhere alleges that plaintiff was transferred to the custody of the Sheriff after an order remanding was issued [see CT 97:14-28]; and it omits entirely the allegations of paragraphs (jj) and (kk) which alleges two more days of imprisonment, being subjected to further harassment, intimidation, and gross indignities without having been brought before a magistrate or any judicial officer to determine the probable cause for his warrantless felony arrest or for any other purpose [CT 98:1-16]. [Decision p.4].

"Seventh paragraph: The final paragraph of the court's version of the facts eliminates

altogether the allegations regarding the ***false arraignment*** that was conducted against plaintiff, alleging all the particulars of its falsity, i.e., "there being no oath or affirmation, no probable cause, no review by the District Attorney, no verified complaint, no commitment by a magistrate, no judicial determination of probable cause, no notice to plaintiff of having been arrested on a felony charge, no notice that his felony charge had been or was then being disposed of, and no due process of law whatsoever in plaintiff's case" [CT 99:2-9], and also alleging that the commissioner proceeded to conduct a false arraignment... all without subject matter jurisdiction to act whatsoever in plaintiff's criminal matter, and all as a proximate result of the warrantless felony arrest of plaintiff six days earlier, for which there was never a judicial determination of probable cause [CT 99:11-20]; it omits the allegation that plaintiff's release "concluded six days of false imprisonment as a proximate result of the false felony arrest..., for which there was never, at any time, a judicial or other determination of probable cause [CT 100:4-8]. Based on what has been alleged and has now been proved on the record in the tort action, plaintiff has shown that he has been subjected to an unwarranted prosecution and false "conviction" due to the failure and refusal of defendants to take plaintiff's felony arrest to the District Attorney and to a magistrate before proceeding with any criminal prosecution. [Decision p.4]." [REH 39-46].

[APP.4]: "**The Court of Appeal deprived plaintiff of liberty and property without due process of law by denying plaintiff notice and opportunity to be heard on the issue of Failure to State a Cause of Action.**

While plaintiff does not question the right of the Court of Appeal to have decided, rightly or wrongly, whether plaintiff stated a cause of action [Decision p.19] against defendant STRAUCH in his

complaint for tort damages, he does challenge the denial of notice and opportunity to be heard on that issue. Plaintiff brought to the Court's attention that this (i.e., the decision on appeal) was the ***first time*** that such an issue was raised in this tort action, it never having arisen at trial nor at oral argument before the appellate court. [REH p.1]. By pulling this "surprise rabbit out of the hat" in its final decision on appeal, the Court not even raising a hint of this issue as a concern at oral argument, plaintiff has been foreclosed from any notice and opportunity to be heard on the matter. Had the appellate court remanded the matter to the trial court for appropriate action based on its decision, plaintiff would have been afforded opportunity to respond to the issue at the trial level by moving for leave to amend the complaint to state a cause of action as to defendant STRAUCH, or to stand on the complaint and appeal that issue.

Plaintiff brought this fundamental issue to the Court's attention that it has seriously prejudiced plaintiff by placing him in the untenable position of being forced to make a first opportunity post-decisional response to that issue in a ***petition for rehearing***; that such procedure totally deprives plaintiff of all opportunity to either argue in defense of the issue by standing on his complaint and appeal that issue, or to move for leave to amend the complaint to state a cause of action as to defendant STRAUCH if one wasn't stated. [REH p.2].

Plaintiff stated in his REH "This is a fundamental issue to this entire appeal and petitioner must be allowed an opportunity to respond at the earliest possible time; and unless the court seriously considers petitioner's argument on this issue at this time and makes an informed and reasoned response to it by a written modified or supplemental decision reflecting the particulars of that consideration, petitioner will be deprived of procedural due process on this appeal which will in turn destroy the post-deprivation process

of redress of alleged wrongdoing against defendant STRAUCH by this tort action protected by the state and federal constitutions." [REH p.2].

Despite the prejudice already brought against plaintiff by the Court by its procedure in handling its decision that the complaint fails to state a cause of action, without providing notice or opportunity for plaintiff to be heard thereon, the Court nevertheless abandoned its obligation to provide such an opportunity to plaintiff by summarily denying the REH on June 30, 1992, causing plaintiff irreparable harm and injury, both great and immediate, in that his state tort remedy, i.e., the post-deprivation process of redress, against defendant STRAUCH, has been ***destroyed*** by such action. In the interest of showing that plaintiff's demand for due process is not a hollow one for which due process would have availed nothing, had he been given opportunity to be heard thereon, he would have shown that indeed he did allege a ***prima facie*** cause of action as a matter of law for false arrest/false imprisonment against defendant STRAUCH on page 33, paragraph 21 of the first amended complaint, to wit:

"21. On or about the 11th day of May, 1986, at and in the City of Los Angeles... defendant ANTHONY R. STAVROPOULOS and PATRICK SHANNON, while both were acting within the course and scope of their employment as police officers of defendant CITY OF LOS ANGELES, ***with the aiding, abetting, assistance, cooperation and direction of defendant CRAIG J. STRAUCH,*** as aforesaid, did willfully, knowingly, maliciously, and in bad faith ***based on the subjective and uncorroborated information provided by defendant STRAUCH,*** as aforesaid, ***place plaintiff under felony arrest*** under color and pretense of legal authority, ***without warrant or other process,*** and ***imprison plaintiff*** against his will and over his objection, to his damage and detriment, as herein described, said defendants having had no reasonable cause to believe that plaintiff had committed a felony, in violation of Penal Code Sections 146 and 836,

depriving plaintiff of his right to have his person secure from unreasonable seizure, search, unjustifiable force and bodily harm without due process of law, in violation of Article I, Sections 1, 7(a) and 13 of the California Constitution." [emph. added]. [CT 103-104]. The above allegation carries the entire tort action against defendant STRAUCH, all other allegations being the proximate result of this one. The above portions in italics show the elements of the cause of action, as well as the allegations joining STRAUCH into that action. As a proximate result of defendant STRAUCH's participation with the police as alleged, plaintiff suffered ***six consecutive days*** of imprisonment without any due process of judicial review, also alleged in the complaint.

Applying law to these facts, the courts have settled the issue: "All that need be alleged to charge unlawful arrest is the arrest without process, the imprisonment, and the damages." Collins v. Owens (1947) 77 Cal.App.2d 713, 715. [REH p.2]. "The elements of a cause of action for false imprisonment are an arrest without legal process, imprisonment, and damages." Ramsden v. Western Union (1977) 71 Cal.App.3d 873, 879. [REH p.3]. "'False arrest' and 'false imprisonment' are not separate torts..." Collins v. City/County of San Francisco (1975) 50 Cal.App.3d 671, 673. [REH p.2]. "The fact that the arrest was made by Los Angeles police officers and not directly by defendants does not render them immune, because a party who 'authorizes, encourages, directs, or assists an officer to do an unlawful act, or procures an unlawful arrest, without process, or participates in the unlawful arrest or imprisonment, is liable.'" DuLac v. Perma Trans Products, Inc. (1980) 103 Cal.App.3d 937, 941. [REH p.3]. "All who take part in or assist in the commission of a false imprisonment are joint tortfeasors, and may be joined as defendants without an allegation of proof of a conspiracy." Oppenheimer v. City of Los Angeles (1951) 104 Cal.App.2d 551, 553; Harden v.

San Francisco Bay etc. (1989) 215 Cal.App.3d 7, 15. [REH p.3].

Plaintiff brought this law to the attention of the Court of Appeal so it would know plaintiff's argument is not idle and meaningless, but well-founded in law.

Further, it has been determined: "The facts of a properly pleaded complaint, i.e., the material facts, and 'the [legal] right [which] is inferred therefrom' provide the woof and warp of a cause of action. It is the law which provides the organizing principle, i.e., the legal standard, by which the facts are made legally significant (i.e., material).... 'The law and facts of a case bear a chicken and egg relationship. The law identifies the ***kinds*** of facts which are material to the case. The facts delimit the applicable propositions of law.'" Perry v. Robertson (1988) 201 Cal.App.3d 333, 339.

Plaintiff's complaint alleges those elements which form the ***material facts*** according to the "law which provides the organizing principle... by which the facts are made legally significant...." Perry v. Robertson (supra) 201 Cal.App.3d at 339.

The whole decision rests upon a fallacious ruling that the complaint does not state a cause of action or prove any damages against defendant STRAUCH, which ruling is based upon the Court's numerous misstatements of fact throughout its "Statement of Facts" on pp 2-4 of its decision (and elsewhere throughout the decision). This matter was brought to the Court's attention as Argument 2 of the REH pp.39-46.

Footnote 1 of the decision [p.2] states that the "Statement of Facts" is taken from the allegations of plaintiff's complaint-- yet comparing the Court's "Statement" with the complaint, it roughly parallels only the alleged overt acts of the Conspiracy count, not the direct counts alleging specific causes of action, for example Count III alleging False Arrest/False Imprisonment. The Court's "Statement" doesn't touch those

material facts that indeed establish a cause of action against STRAUCH.

All of these legal arguments could have been made upon remand to the trial court following the ruling of the Court of Appeal. This procedural defect of failing to remand the matter to the trial court for appropriate action not inconsistent with its ruling has ***destroyed*** plaintiff's state tort remedy against STRAUCH by foreclosing notice and opportunity to be heard on these rulings, and is an important question of law that should be settled by this Court of last resort in the State of California." [RVW 5-10].

[APP.5]: " THE COURT OVERLOOKS THE ALLEGATIONS PROVING DAMAGES . In the first instance, plaintiff stands on his tort complaint and the allegations therein regarding numerous tort violations and outrageous conduct for proof of his entitlement to damages. A cause of action for false imprisonment, which has been properly alleged in the complaint, entitling plaintiff to relief does not require any allegation of damages other than the fact of confinement itself. DuLac v. Perma Trans Products, Inc. (1980) 103 Cal.App.3d 937, 945, 163 C.R. 335. Thus, having alleged ***the fact of confinement*** which must be deemed established by defendant's default, is sufficient to prove damages.

"Comment (a) (Rest.2d Torts §902, also §12A) states in pertinent part: "Damages flow from an injury. As stated in §7, injury denotes the invasion of any legally protected interest. 'Injury' is thus distinguished from 'harm', which is a nonlegal word implying merely a detriment in fact. The infliction of harm does not always give rise to a cause of action.... Conversely, there may be a cause of action although there has been no harm."

"The distinction between "injury" and "harm" is described in §7 as follows: "(1) The word 'injury' is used throughout the Restatement of this Subject to denote the invasion of any legally protected interest of another. (2) The word

'harm' is used throughout the Restatement of this Subject to denote the existence of loss or detriment in fact of any kind to a person resulting from any cause. (3) The words 'physical harm' are used throughout the Restatement of this Subject to denote the physical impairment of the human body, or of land or chattels."

"Comment (a) to §7 is entitled "Injury" and "harm" contrasted, and states "The word 'injury' is used throughout... to denote the fact that there has been an invasion of a legally protected interest which, if it were the legal consequences of a tortious act, would entitle the person suffering the invasion to maintain an action of tort. It differs from the word 'harm' in this: 'harm' implies the existence of loss or detriment in fact, which may not necessarily be the invasion of a legally protected interest. the most usual form of injury is the infliction of some harm; but there may be an injury although no harm is done. ... [T]he mere apprehension of an intentional and immediate bodily contact, whether harmful or merely offensive, is as much an 'injury' as a blow which breaks an arm.... The meaning of the word 'injury', as here defined, differs from the sense in which the word 'injury' is often used, to indicate that the invasion of the interest in question has been caused by conduct of such a character as to make it tortious."

"'Compensatory damages' are damages awarded to a person as compensation, indemnity or restitution for harm sustained by him. (Rest.2d Torts §903). Comment (a) describes it: "When there has been harm only to the pecuniary interests of a person, compensatory damages are designed to place him in a position substantially equivalent in a pecuniary way to that which he would have occupied had no tort been committed. When however, the tort causes bodily harm or emotional distress, the law cannot restore the injured person to his previous position. The sensations caused by harm to the body or by pain or humiliation are not in any way analogous to a

pecuniary loss, and a sum of money is not the equivalent of peace of mind. Nevertheless, damages given for pain and humiliation are called compensatory. They give to the injured person some pecuniary return for what he has suffered or is likely to suffer. There is no scale by which the detriment caused by suffering can be measured and hence there can be only a very rough correspondence between the amount awarded as damages and the extent of the suffering...."

"(1) 'General damages' are nonpecuniary damages for a harm so frequently resulting from the tort that is the basis of the action that the existence of the damages is normally to be anticipated and hence need not be alleged in order to be proved.

"(2) 'Special damages' are compensatory damages for a harm other than one for which general damages are given.

(Rest.2d Torts §904).

"Comment (a) states in pertinent part: "The harm for which general damages are given is that which a statement of facts constituting the claim for a tort suggests so clearly that it is unnecessary to give notice of its existence other than that implied from the statement of claim...."

"Comment (c), last paragraph, states: "If bodily harm of any kind is alleged, physical pain and suffering resulting from it can be shown without any specific allegation. In other words, it is regarded as general damages.

"Nonpecuniary Harm: Compensatory damages that may be awarded without proof of pecuniary loss include compensation

"(a) for bodily harm;

"(b) for emotional distress.

(Rest.2d Torts §905)

"Comment (a): Damages for nonpecuniary harm are most frequently given in actions for bodily contact and harm to reputation, but they may also be given in actions for other types of harm, as indicated in Comments (c) to (h).

"(c) Emotional distress
"(d) Humiliation
"(e) Fear and anxiety
"(f) Loss of companionship
"(g) Loss of freedom

"Comment (b): Bodily harm. Bodily harm is any impairment of the physical condition of the body, including illness or physical pain. It frequently causes the harms described in Comments (c) to (e). It is not essential to a cause of action that pecuniary loss result. Furthermore, damages can be awarded although there is no impairment of a bodily function....

"Comment (c): Emotional distress in general. The principal element of damages in actions for battery, assault or false imprisonment... is frequently the disagreeable emotion experienced by plaintiff... (pertinent part).

"Comment (d): Humiliation. One who has a cause of action for a tort may be entitled to recover as an element of damages for that form of mental distress known as humiliation, that is, a feeling of degradation or inferiority or a feeling that other people will regard him with aversion or dislike. This state of mind may result from a physical harm, an imprisonment, a defamatory statement, the disruption of the marital relation.... In torts involving offense to a sense of dignity, the element of damages based on the imposition of humiliation on the injured party may have a supplementary feature in the sense of vindication that arises from a judgment for "compensatory" damages that declares publicly that he has been mistreated and that he was justified in resenting it.

"Comment (e): Fear and Anxiety. As an element of damages for a tort, one may be able to recover for a feeling of anxiety, not only for himself but for others, if this is the expectable result of the defendant's tortious act or if the defendant intended that result.... In accordance with the rule stated in §501, the extent of liability for this sort of emotional distress may be affected

by the fact that the actor's conduct is reckless rather than merely negligent.... In some cases, fear and anxiety alone are a sufficient basis for the action, as when the defendant has assaulted the plaintiff....

"Comment (g): Loss of freedom. The loss of freedom is an element of damages if the defendant intentionally causes the loss. In this situation the plaintiff is entitled to recover, not merely for pecuniary loss that he has suffered from being unable to pursue his vocation, but also for harm to feelings that results because of his inability to move freely wherever he desires....

"Comment (i): Measure of recovery. The length of time during which pain or other harm to the feelings has been or probably will be experienced and the intensity of the distress are factors to be considered in assessing the amount of damages.... As stated in §910, damages include an amount for the harm suffered in the past, present and that estimated for the future.... As stated in §912, Comment (b), there is no rule of certainty with reference to the amount of recovery permitted for any particular type of emotional distress; the only limit is such an amount as a reasonable person could possibly estimate as fair compensation....

"Punitive Damages:

"Having alleged False Imprisonment and Intentional Infliction of Emotional Distress establishes a strong basis for punitive damages. Any tort which involves sufficiently reprehensible conduct presents a proper case for punitive damages. Examples are intentional torts such as False Imprisonment and Intentional Infliction of Emotional Distress. (6 Witkin Summ. 9th Ed. (1988) Torts §1349). "Any tort" would include constitutional torts alleged by plaintiff meeting the "reprehensible" requirement. Facts alleged in these charging allegations are to be considered in support of the requirements for punitive damages. Allegations must be read in context with other facts alleged in the complaint. The basis for

punitive damages may be sufficiently plead when the language of the complaint is read in the entire context of defendants' conduct. (Monge v. Superior Court (1986) 176 Cal.App.3d 503, 510-511, 222 C.R. 64).

"The test for allegations of fact or conclusions of law is not absolute; the question is whether the pleading as a whole apprises the adversary of the factual basis for recovery of punitive damages. (Kiseskey v. Carpenters' Trust etc. (supra) 144 Cal.App.3d at 234). The pleading is sufficient if it employs descriptive fact allegations showing that the only ostensible motive for defendants' injurious conduct was to vex, harass, and annoy plaintiff by subjecting him to an oppressive situation. (Monge v. Superior Court (supra) 176 Cal.App.3d at 511).

"'Oppression' for purposes of the exemplary damage statute has been defined as subjecting a person to cruel and unjust hardship in conscious disregard of his rights. (R.Norton Co. v. General Teamsters etc. (1989) 208 Cal.App.3d 430, 444; Monge v. Superior Court (supra) p.511; G.D. Searle & Co. v. Superior Court (1975) 49 Cal.App.3d 22, 27, 122 C.R. 218). Also, as used in the statute (CC §3294), 'malice' means conduct intended to injure or conduct carried on with a "conscious disregard" of another's rights. (Travelers Ins. Co. v. Lesher (1986) 187 Cal.App.3d 169, 200, 231 C.R. 791).

"'Malice in fact'(referred to as "actual malice"), sufficient to support punitive damages may be established by showing that defendants' wrongful conduct was "willful, intentional, and done in reckless disregard of its possible results." This conduct was alleged for punitive damages in the FAC. Where conduct is taken recklessly and in disregard of its injurious consequences, malice in fact exists. Such malice is consistent with a personal intent to injure those affected by the conduct. (G.D. Searle & Co. v. Superior Court (supra) p.28). According to Searle, when requesting punitive damages for an intentional

wrong, the pleading must allege that the wrong was committed willfully or with a design to injure. (Id. p.29); plaintiff has so alleged.

"'Animus malus', or evil motive, is the central element of the malice which justifies punitive damages, (i.e., malice in fact or "actual malice"). (Id . p.30). To prove punitive damages, the defendant must be guilty of oppression, fraud or malice. (CC §3294). He must act with the intent to vex, injure or annoy, or with a conscious disregard of plaintiff's rights. (Id. p.32); plaintiff has so alleged.

"A 'conscious disregard of safety' may be substituted for 'disregard of rights' and is an appropriate description of the 'animus malus' justifying punitive damages when non-deliberate injury is alleged. (Id. p.32). A "conscious and deliberate disregard of the interests of others" is conduct that may be called "willful or wanton" which describes circumstances of aggravation or outrage. A "conscious disregard of the safety of others" (which the Searle court stated may be substituted for "disregard of rights") may constitute "malice" within the meaning of CC §3294. "Knew or should have known" describes the state of mind from which a "conscious disregard of rights" might be inferred. (Grieves v. Superior Court (1984) 157 Cal.App.3d 159, 167, 203 C.R. 556). "Conscious disregard of rights" indicates that defendant was aware of the probable consequences of his conduct and willfully and deliberately failed to avoid them. (J.R. Norton Co. v. General Teamsters etc. (supra) 208 Cal.App.3d at 444; see Taylor v. Superior Court (1979) 24 Cal.3d 890, 895-6).

"Malice and oppression regarding recovery of punitive damages may be inferred circumstantially. (J.R. Norton Co. v. General teamsters etc. (supra) p.444; Monge v. Superior Court (supra) p.511). Most often "animus malus" is proven by circumstantial evidence alone. (Seimon v. So.Pac.Transp.Co. (1977) 67 Cal.App.3d 600, 607, 136 C.R. 787).

"Plaintiff has alleged sufficient descriptive facts, particularly in the charging allegations of False Imprisonment and Intentional Infliction of Emotional Distress, from which the above allegations of the "reprehensible conduct" may be inferred to establish a basis for punitive damages." [REH 49-56].

[APP.6]: "The Court of Appeal deprived plaintiff of liberty and property without due process of law by denying plaintiff notice and opportunity to be heard on the issue of Failure to Prove Damages against defendant.

"As with the first issue, plaintiff does not question the court's right to decide, rightly or wrongly, that plaintiff failed to prove damages against defendant STRAUCH [Decision p.19], but he does challenge the denial of notice and opportunity to be heard on that issue. As stated before, the Court of Appeal is the ***first court*** to address the state tort complaint against STRAUCH. As plaintiff pointed out in his opening brief, the trial court focused its attention only on the underlying ***criminal matter***. [See AOB pp 16-19]. The trial court's decision was not based on anything in the complaint as to whether it set forth tort damages. (See Argument II of the AOB pp 14-26). With the trial court's attention focused on the criminal matter, instead of the tort action before the court, its question "Any other evidence?" was clearly limited in scope to the criminal subject matter inquired of by the court's choosing-- not plaintiff's choosing. Plaintiff responded accordingly within that scope. The record shows that the trial judge didn't want plaintiff to present testimony regarding the complaint for "false arrest and false imprisonment." Plaintiff was precluded from giving testimony about the subject matter of the tort action and tort damages. (See AOB p.18) [Decision p.7].

"Notwithstanding, the Court of Appeal did not remand the case back to the trial court for

appropriate action based on its decision. Consequently, plaintiff was denied notice and opportunity to be heard on the subject of damages, especially after the summary denial of his petition for rehearing.

"Again, 'damages' alleged in plaintiff's complaint is a ***prima facie*** matter of law, "A cause of action for false imprisonment entitling plaintiff to relief does not require any allegation of damages other than the fact of confinement itself." DuLac v. Perma Trans Products, Inc. (1980) 103 Cal.App.3d 937, 945. Plaintiff's complaint requires no more allegation of damages to state a cause of action other than to state the fact of confinement itself. Having complied therewith in his complaint, he has therefore stated a ***prima facie*** case of damages. Law itself settles this matter. Default admits to the allegation of imprisonment, and this damage must be accepted as true. Notwithstanding this fact, the complaint itself attaches proof of the damage of imprisonment [CT 143 under "Booking"].

"This matter was brought to the Court's attention [REH p.3, p.49], however the Court chose to summarily deny REH without addressing it. Paragraph 21 of the first amended complaint, quoted in the previous argument, sufficiently alleges a cause of action as well as damages for false imprisonment.

"Plaintiff also brought to the Court's attention that his allegations throughout the complaint were sufficient to prove his entitlement to damages on other counts as well. [REH pp 49-56]. Thus, as the Court of Appeal has been made aware, plaintiff does not present an idle argument regarding the denial of an opportunity to be heard on this issue as well; if he had been given that opportunity as he should have, he could have shown damages based on the face of the tort complaint itself. However, plaintiff was denied that opportunity, and the issue now becomes the deprivation of liberty and property ***without due process of law*** in violation of the Fourteenth Amendment to the United States Constitution, and

Article I, Section 7(a) of the State Constitution, an important question of law that should be settled by this State Supreme Court." [RVW 10-12].

[APP.7]: "THIS COURT HAS OVERLOOKED THE FACTS THAT HAVE BEEN ALLEGED WHICH LEAD TO THE BOGUS MISDEMEANOR COMPLAINT AND LACK OF JURISDICTION OF THE MUNICIPAL COURT.

"While the validity of the misdemeanor complaint and the jurisdiction of the municipal court over the criminal proceedings are themselves "questions of law" as this court points out [Decision p.7], the court has overlooked the fact that plaintiff has indeed alleged facts which must be deemed established by defendant's failure to answer. Plaintiff has alleged throughout the complaint, as shown in the above arguments, that he was never taken before a magistrate for a judicial determination of probable cause on the warrantless felony arrest. He has also alleged throughout the complaint that his warrantless felony arrest was never presented to the District Attorney for his initial evaluation and decision regarding prosecution charges. Plaintiff also alleged the fact that the police unilaterally converted the felony arrest into a misdemeanor complaint without ever taking the felony to a magistrate or District Attorney. The failure of defendants to take plaintiff before a magistrate regarding the warrantless felony arrest and the failure of defendants to take the felony arrest to the District Attorney for his pre-prosecution evaluation and decision, plus the fact that the police unilaterally disposed of the felony arrest and decided to proceed with misdemeanor charges against plaintiff, are pure facts that have been alleged in the complaint which must be deemed established by defendant's default. With those factual allegations appearing on the face of the complaint, neither the judge nor this Court can presume for evidence the validity of the misdemeanor complaint and the jurisdiction of the municipal court over the criminal proceedings and

hold those "questions of law" as being established in favor of validity and jurisdiction and rely on such a presumption.

"There is a bright line distinction between pre-deprivation process and post-deprivation process. See Zinermon v. Burch (1990) 110 S.Ct. 975, at pp 986-990. In plaintiff's case, the former is the post-arrest process which was to have been followed within legal time limits after plaintiff's arrest. The latter (post-deprivation process) is the state tort remedy for the purpose of redressing the alleged tort violations that occurred during the time period in which the pre-deprivation process was due. The former (pre-deprivation process) is no longer before the court, i.e., the merits of the criminal proceeding. That time-period has passed and the post-deprivation process is now before the court and the judicial process must be limited to the latter, i.e., the merits of the tort action-- the judicial remedy to redress the tort violations growing out of the earlier process (the criminal matter). By operation of law, evidence of what happened at the criminal proceeding does not and cannot replace or supersede evidence of the tort action now before the court." [REH 47-49].

[APP.8]: "The Court of Appeal deprived plaintiff of liberty and property without due process of law by denying plaintiff an opportunity to be heard on the facts alleged in the complaint leading to (1) the bogus misdemeanor complaint, and (2) the lack of subject matter jurisdiction of the municipal court in the criminal proceeding.

"The rationale offered by the Court of Appeal regarding plaintiff's allegations of a bogus misdemeanor complaint and the lack of subject matter jurisdiction in the municipal court over the criminal proceedings is that they "are questions of law" and "are not facts which must be deemed established by defendant's failure to answer." [Decision p.7].

"'Questions of law' do not exist in a vacuum-- they must be decided on the ***material facts alleged in the complaint*** that would lead to those 'questions of law.' As stated in Perry v. Robertson (supra) "The law identifies the ***kinds*** of facts which are material to the case. The facts delimit the applicable propositions of law." (201 Cal.App.3d at 339). Rather than address the ***material facts*** that are alleged in the complaint which identify those 'questions of law', the Court viewed those 'questions of law' in isolation stating that "Plaintiff's allegations ***in this regard*** are not facts which must be deemed established by defendant's failure to answer." [Decision p.7].

"Plaintiff brought this matter to the attention of the Court of Appeal in his REH, stating "The failure of defendants to take plaintiff before a magistrate regarding the warrantless felony arrest and the failure of defendants to take the felony arrest to the District Attorney for his pre-prosecution evaluation and decision, plus the fact that the police unilaterally disposed of the felony arrest and decided to proceed with misdemeanor charges against plaintiff, are pure facts that have been alleged in the complaint which must be deemed established by defendant's default." [REH p.48].

"Justice Robert Devich concurring in the decision was himself a high-ranking deputy district attorney and personally knows, or reasonably should know, that those facts are ***material*** to the allegations of "bogus misdemeanor complaint" and "lack of subject matter jurisdiction of the municipal court in the criminal proceeding" under the circumstances of this case based on the complaint as a whole.

"Plaintiff also explained the distinction between the ***pre-deprivation process*** (i.e., the post-arrest process that was to have been followed) and the ***post-deprivation process*** (i.e., the state tort action currently before the court) to redress the alleged wrongs committed during the pre-deprivation process [REH p.48] (citing

Zinermon v. Burch (1990) 110 S.Ct 975, 986-990), and stated "By operation of law, evidence of what happened at the criminal proceeding does not and cannot replace or supersede evidence of the tort action now before the court." [REH p.49].

"Nevertheless, the Court of Appeal summarily denied the REH, letting stand its rationale that "plaintiff's allegations did not render evidence of what occurred in the criminal proceedings irrelevant" because "plaintiff's allegations (regarding "bogus misdemeanor complaint" and "lack of subject matter jurisdiction of the municipal court...") are not facts which must be deemed established by defendant's failure to answer." [Decision p.7]. By not remanding the matter back to the trial court for appropriate action pursuant to its appellate decision, the Court of Appeal denied plaintiff an opportunity to be heard on the material facts alleged in the complaint leading to the fact that a "bogus misdemeanor complaint" was filed, and that the "municipal court lacked subject matter jurisdiction in the criminal proceeding"-- both of which "questions of law" have been ***proved by the evidence*** submitted against all defendants, including STRAUCH, in the state tort action.

"Plaintiff has thus been deprived of liberty and property ***without due process of law*** in violation of the Fourteenth Amendment to the United States Constitution and Article I, Section 7(a) of the California Constitution, an important question of law that should be settled by this Supreme Court." [RVW 13-15].

[APP.9]: "3. THE COURT OVERLOOKS ITS LIMITED ROLE AS ONLY A REVIEWING COURT. This Court's decision goes beyond a reviewing court and actually attempts to try the case on its merits, which it cannot do. "An appeal is not a retrial." Eagans v. Key System Transit Lines (1958) 158 Cal.App.2d 13,16, 321 P.2d 891. "[A reviewing court] is not permitted on appeal to consider evidence not before the trial court." Employers

Cas. Co. v. Northwestern Nat. Inc. Group (1980) 109 Cal.App.3d 462, 473, 167 C.R. 296. "An appellate court cannot consider facts which do not appear in the record and which were not before the trial court." Estate of Thatcher (1953) 120 Cal.App.2d 811, 815, 262 P.2d 337. "Appellate courts adhere to the issues properly presented by the appeal. They take cognizance of only the matters presented in writing by the parties." Estate of Bodger (1954) 128 Cal.App.2d 710, 715, 276 P.2d 83.

"This Court has attempted to sit in the role as a magistrate in the post-arrest context to attempt to determine whether or not there existed probable cause for plaintiff's arrest by STRAUCH and the police on May 11, 1986. The issue before this Court is not whether there was probable cause for plaintiff's arrest, but whether due process was followed by submitting plaintiff's case to a magistrate as required by law. What that magistrate's decision might have been had the regular processes been followed is now of no consequence. The complaint alleges the fact that at no time was plaintiff taken to a magistrate, nor was any probable cause for plaintiff's arrest determined, and those facts taken as true, along with the factual allegation that STRAUCH made the arrest automatically results in liability on his part, entitling plaintiff to a judgment in his favor against STRAUCH." [REH 46-47].

[APP.10]: "**The Court of Appeal deprived plaintiff of liberty and property without due process of law by acting in excess of its limited jurisdiction as a reviewing court in this appeal.**

"A reading of the decision shows that the Court of Appeal went beyond deciding whether the complaint failed to state a cause of action and failed to prove damages, by attempting to sit in the role of a "magistrate" in a post-arrest criminal context to now determine belatedly what a magistrate ***might have determined*** regarding probable cause for plaintiff's arrest by STRAUCH and the police on May 11, 1986 [Decision pp 11-17].

Based on that determination, the Court concluded that plaintiff did not allege a cause of action against STRAUCH. However, the issue before the Court in this tort action is ***not*** whether or not there existed probable cause for plaintiff's arrest, but whether ***post-arrest due process was followed*** by submitting plaintiff's arrest to a magistrate as required by law within the meaning of Penal Code §§825, 849(a), Article I, Section 13 of the California Constitution, and the Fourth Amendment of the U.S. Constitution, for a judicial determination of probable cause. What a magistrate's determination ***might have been*** in retrospect had ***the regular post-arrest*** processes been followed is of no consequence at this time. Further, under Article I, Section 13 of the California Constitution, and the Fourth Amendment of the U.S. Constitution, an arrest without judicial process fails upon the same legal basis as an arrest determined to be without probable cause, neither fares the better.

"The tort complaint alleges the fact that at no time was plaintiff's case taken before a magistrate, nor was any probable cause for plaintiff's arrest determined, and those facts taken as true, along with the allegations of false arrest/false imprisonment by the police, assisted by STRAUCH playing an active role in such arrest automatically results in liability on STRAUCH's part, entitling plaintiff to a judgment in his favor against STRAUCH on default.

"Plaintiff brought this matter to the Court's attention in his REH (pp 46-47), however the Court summarily denied the REH resulting in the deprivation of plaintiff's statutory right to appellate review of the proceedings in trial court, which in turn has ***destroyed*** plaintiff's state tort remedy against defendant STRAUCH, in violation of procedural due process under the Fourteenth Amendment to the United States Constitution and Article I, Section 7(a) of the California Constitution, an important question of law to be settled by this Supreme Court." [RVW 16-17].